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Resumption of Voting in the Sejm – A Few Remarks

Keywords: the Sejm, resumption of voting, parliamentary procedure
Słowa kluczowe: Sejm, reasumpcja głosowania, procedura parlamentarna

Abstract

The article is entirely devoted to the issue of adopting the resumption of voting in the Sejm of the Republic of Poland. It concerns all the aspects of this institution, starting with genesis, through its systemic *ratio legis*, and ending with the material premises and the procedural mechanism of its application. The main goal is to analyze the normative content of the legal solutions in force in this area and, at the same time, to present selected experiences of political system practice. Focusing on these elements, the author answers the question of necessity of establishing the Article 189 of the Standing Orders of the Sejm, as well as the limits of using the institution of resumption in parliamentary practice. These efforts are accompanied by in-depth reflection on what should be changed in the content of the mentioned provision in order to make resumption an even more effective tool for verifying parliamentary votes.

Streszczenie

Reasumpcja głosowania w Sejmie – kilka uwag

Niniejszy artykuł poświęcony jest w całości problematyce uchwalania reasumpcji głosowania w Sejmie RP. Zawarty w nim wywód dotyczy wszystkich aspektów tej instytucji, począw-

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szy od genezy, poprzez jej ustrojowe *ratio legis*, a skończywszy na materialnych przesłankach i proceduralnym mechanizmie jej stosowania. Zasadniczy cel stanowi tutaj poddanie analizie normatywnego kształtu obowiązujących w tym zakresie rozwiązań prawnych i jednocześnie ukazanie wybranych doświadczeń praktyki ustrojowej. Koncentrując się na tych elementach, autor próbuje udzielić odpowiedzi na pytanie o zasadność ustanowienia normującego tę materię art. 189 regulaminu Sejmu a także o granice korzystania z instytucji reasumpcji w praktyce parlamentarnej. Podjętemu wysiłkowi badawczemu towarzyszy pogłębiona refleksja nad tym, co należałoby zmienić w treści wskazanego przepisu, tak by uczynić reasumpcję jeszcze bardziej efektywnym narzędziem służącym weryfikowaniu sejmowych głosowań.

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I. Introduction

In Polish parliamentary law, it is a rule that voting in the Sejm is final, and its conduct closes definitely this phase of the work of the chamber (Art. 188 (5) of the Standing Orders of the Sejm)[2]. On this assumption, the legislator allows only one exception, when it becomes possible to challenge the act of voting and cause it to be repeated. The legal measure that serves this purpose is the resolution on the resumption of voting, adopted pursuant to the Article 189 of the Chamber Rules. According to this provision, the Sejm may resume a vote if the result of the vote raises justified doubts. A motion in this matter may only be submitted at the meeting at which the vote was held, and in order to be effective, it must be signed by a group of at least 30 deputies. Basically, resumption covers all kinds of votes in the chamber; only its application in case of a roll-call vote is prohibited.

II. The Genesis and *Ratio Legis* of the Regulation of the Resumption of Voting in the Sejm

Moving on to considerations regarding the institution of resumption of voting in the Sejm, it is worth noting, at the beginning, that for the first time in

[2] Resolution of the Sejm of the Republic of Poland of 30 July 1992. The Standing Orders of the Sejm of the Republic of Poland (unified text M.P. 2019 item 1028).

the Polish legal system the provisions regulating it appeared under the Standing Orders of the Sejm of 1992[3]. Earlier, during the Polish People's Republic, this type of legal structure was unknown[4], and in the interwar period it was given a completely different normative form and got a different name – "repeated voting". This issue was regulated specifically by the both interwar Standing Orders of the Sejm – from 1923[5] and 1930[6] (in both acts it was Art. 53). That provision proclaimed that if one of the members of the presidium in office doubts the result of the vote, then it becomes necessary to additionally vote by counting the votes.

The fact that resumption is provided in the Standing Orders of the Sejm should be assessed positively due to the systemic importance of this institution. There is no doubt that such a normative regulation creates a clear legal basis for actions that make possible influencing the direction of substantive decisions of the body that is the decision-making center of a democratic state, and at the same time gives a guarantee for one of the most known instruments in comparative law of the political activity of the parliamentary opposition[7]. An important advantage is also the fact that the regulation, which is expressed directly, allows avoiding a discussion on the possible admissibility of using resumption in practice without the existence of a regulatory procedure in this respect[8]. This is all the more valuable as similar discussions have taken place in the history of Polish parliamentarism. It is worth recalling, for example, the interwar disputes over the possibility of passing a motion on the resumption of a resolution (let us note: resolutions, not voting) based solely on precedent norms and the resulting inconsistent practice of the Sejm in the 1920s. One can also point

[3] Resolution of the Sejm of the Republic of Poland of 30 July 1992. The Standing Orders of the Sejm of the Republic of Poland (M.P. 1992 No. 26 item 185).

[4] M. Kudej, *Komentarz do regulaminu Sejmu Polskiej Rzeczypospolitej Ludowej*, Katowice 1974, p. 135; J. Marszałek-Kawa, *The Institutional Position of the Sejm of the Republic of Poland after the Accession to the European* Union, Toruń 2016.

[5] The Standing Orders of the Sejm adopted on February 16, 1923 (print No. 406/49).

[6] The Standing Orders of the Sejm adopted on December 16, 1930 and the Constitution of the Republic of Poland, Warsaw 1931 (print No. 34).

[7] K. Complak, *Opozycja parlamentarna w obowiązującej i przyszłej Konstytucji*, "Przegląd Sejmowy" 1995, No. 2, p. 39.

[8] L. Zieleniewski, *Regulamin Senatu na tle regulaminów oraz praktyk izb ustawodawczych w Polsce i innych państwach*, Part 1, Warsaw 1933, pp. 185–185.

to the doubts raised not so long ago regarding the right to apply resumption of voting in the work of parliamentary committees (on this level, resumption was not regulated by the Standing Orders). Practice and doctrine have recognized that the silence of the Standing Orders is not an obstacle to this activity[9], but this does not completely remove the controversies that arise in this regard.

III. Substantive Grounds for Submitting a Motion for Voting Resumption in the Sejm

The analyzed Art. 189 of the Standing Orders of the Sejm defines in a very general manner the substantive grounds for launching the resumption procedure. Let us remind that, according to this provision, it may take place "when the result of voting raises reasonable doubts". Such a drafting of the aforementioned regulation is not surprising and should be considered as a fully rational approach. Certainly, in view of the unpredictability of events in parliamentary practice, it would be difficult to list *numerus clausus* the grounds of this type. Granting Art. 189 normative flexibility, which gives the Sejm a certain "decision-free space", is undoubtedly a step in the right direction. Another thing is that with such a vaguely defined legal framework, the practical application of the institution in question may lead – which is fully confirmed by previous experience – to serious controversy, and in some cases even political abuses (mainly by the camp with the majority in the chamber). It is not always clear whether or not a given situation falls within the scope of the regulation in question. For this reason, it is legitimate to ask which situations give rise to resumption and which are opposed to it. The answer provided here allows to present the limits of using the institution of resumption in the practice of the first chamber of the Polish parliament.

[9] The problem of the admissibility and conditions of applying resumption of voting emerged during the joint meeting of the European Union Affairs Committee and the Committee on Agriculture and Rural Development on March 27, 2007. W. Odrowąż-Sypniewski, *Zagadnienie prawidłowości procedury głosowania na posiedzeniu komisji w dniu 27 marca 2007 r. nad uchwałą w sprawie przyjęciaa informacji rządu, Legal opinion of 2007,* [in:] *Regulamin Sejmu w opiniach Biura Analiz Sejmowych*, vol. II, Biuro Analiz Sejmowych Kancelarii Sejmu, Warsaw 2010 pp. 485–487; A. Szmyt, *Z problematyki prac komisyjnych Sejmu*, "Studia Iuridica Lublinensia" 2014, No. 21, pp. 57–58.

When dealing with this issue, it is worth making a general comment first that the use of resumption in the practice of the functioning of the first chamber of parliament must be considered as an exceptional measure, and the admissibility of this legal measure should be assessed in the context of a given case, showing that there are justified doubts as to the result of a particular vote. It is certainly not desirable that the parliamentarians who use it should be guided by political calculations, especially that they should use it as a way of causing the effect of parliamentary obstruction in the work of the Sejm.

At the same time, it is right to emphasize that indicated in the Article 189 of the Standing Orders of the Sejm, "justified doubts" must have the Sejm in *pleno*, which has the right to make a discretionary decision in this respect. As Paweł Sarnecki notes, the Sejm is here "the entity entitled to decide on resumption, while the » doubts« of the factor submitting the application, although in essence they will be accompanied by a written »justification« or such »justification« will be presented orally, are not automatically decisive, regardless of the number of signatures on such a request"[10]. It can be deduced then that the final resolution on resumption does not have to be based on objective premises, but may result from purely political conditions. Therefore, there always is a risk that the parliamentary majority will decide on the application solely in the interests of the party's own interests.

On the side of cases justifying the use of resumption, there are various situations, both hypothetically imaginable and those resulting from the experiences of the parliamentary practice. For example, there is a scenario in which the secretaries of the Sejm calculating the voting results provide different data, or when discrepancies between the number of votes cast and the conspicuous turnout are found[11]. Furthermore, the situation of failure of the

[10] P. Sarnecki, *Komentarz do Art. 189,* [in:] *Komentarz do Regulaminu Sejmu Rzeczypospolitej Polskiej,* ed. A. Szmyt, Warsaw 2018, p. 844.

[11] Ibdem, p. 844. An example may be the voting conducted at the 33rd Session of the Sejm on December 16, 2016 on the draft budget act, which was held in the Column Hall due to the fact that it was impossible to conduct the meeting because of the misbehavior of opposition clubs. This vote was carried out in conditions of great confusion, with the limited possibilities of the Marshal of the Sejm to supervise the proper course of the work of the chamber according to good manners already rooted in practice. M.M. Wiszowany, *Okoliczności uchwalenia ustawy budżetowej w dniu 16 grudnia 2016 r. (druki nr 881, 1094 i 1094 – A) i ich konsekwencje dla ważności podjętej przez Sejm decyzji,* [in:] *Miscellanea parlamentarne. Praktyka w sferze*

vote-counting device (referred to in the Art. 188 (2) (1) of the Standing Orders of the Sejm) or electronic means of communication enabling remote communication may also be added to this list[12] (mentioned in Art. 198a of the Standing Orders of the Sejm). Another prerequisite for resumption should be that the voting on amendments to individual articles of the act in question was defective (i.e. without keeping the statutory order) voting on amendments to individual articles of the act under consideration (pursuant to the Art. 50 (1) (2) of the Standing Orders of the Sejm amendments, the acceptance or rejection of which determines other amendments), the first amendments to be voted on are those adopted. Finally, such a premise is the case of one or more deputies making a mistake when casting a vote, known from parliamentary practice, in which the voter expresses a position contrary to his own will[13] (as it is easy to guess, the use of the institution of resumption becomes justified in such a situation, especially when, as a result of a mistake, the fate of a given vote is decided).

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napięć konstytucyjnoprawnych, eds. K. Grajewski, A. Szmyt, M.M. Wiszowaty, Gdańsk 2017, pp. 68–70. A request for resumption was announced, but the opposition eventually abandoned the idea. E. Witek, *Reasumpcja głosowania nad budżetem jest wykluczona*, "Wprost", 28.12.2016, https://www.wprost.pl/kraj/10036617/elzbieta-witek-reasumpcja-glosowania-nad-budzetem-jest wykluczona.html (25.10.2020); J. Gowin, *Dymisja marszałka czy reasumpcja głosowania to postulaty zaporowe*, "Gazeta Prawna", 28.12.2020, https://www.gazetaprawna.pl/artykuly/1006004,gowin-dymisja-marszalka-czy-reasumpcja-glosowania-to-postulaty-zaporowe.html (25.10.2020).

[12] Problems related to the failure of such measures appeared during the vote No. 34 and No. 39 on April 6, 2020; see *PiS chce powtarzać sejmowe głosowanie. Tyszka: To nie jest podstawa do reasumpcji*, "Wprost", 6.04.2020 r., https://www.wprost.pl/kraj/10312665/pis-chce-powtarzac-sejmowe-glosowanie-tyszka-to-nie-jest-podstawa-do-reasumpcji.html (25.10.2020); see also *Sprawozdanie Stenograficzne z 9. posiedzenia Sejmu Rzeczypospolitej Polskiej w dniu 6 kwietnia 2020 r. (trzeci dzień obrad)*, Warsaw 2020, pp. 68, 69, 71; *Trzech posłów opozycji zagłosowało z PiS? Koalicja Obywatelska wnioskuje o reasumpcję głosowania*, "Wprost", 6.04.2020, https://www.wprost.pl/wybory-prezydenckie-2020/10312789/trzech-poslow-opozycji-zaglosowalo-z-pis-koalicja-obywatelska-wnioskuje-o-reasumpcje-glosowania.html (25.10.2020).

[13] It should be noted that mistakes of this kind are not uncommon in parliamentary practice. They happen quite often, sometimes even when a large part of the House is wrong. In order to minimize the risk of such cases, parliamentary clubs use specific "sheets" to support voting MPs, and in the case of voting on bills they delegate their rapporteurs who show how to vote during the session; W. Ferfecki, *Sejm errors in voting*, "Rzeczpospolita", 26.07.2013, https://www.rp.pl/artykul/1033454-Sejmowe-pomylki-w-glosaniem.html (25.10.2020).

On the other hand, in the group of circumstances that exclude the use of resumption, we can indicate the change of the text of the adopted resolution, and in case of passing a bill – the substantive content of its provisions. Such a conclusion arises in connection with the wording of Art. 189 of the Standing Orders of the Sejm, which mentions literally only questioning the result of the voting chamber and thus excludes any other action[14]. Going further, a condition for using resumption may not be the fault in earlier stages of the procedure, such as failure to comply with a statutory obligation[15]. Resump-

[14] It is interesting that in parliamentary practice, however, there were situations when the resumption was carried out in order to change the substantive content of laws. Motions of this type concerned specifically voting on the amendments passed to the budget act. For instance, such a situation took place on March 2, 2001. *Czy będzie reasumpcja głosowania?*, "Rzeczpospolita", 2.03.2020, https://archiwum.rp.pl/artykul/326433-Czy-bedzie-reasumpcja-glosowania.html (25.10.2020); *Błędy poprawione*, "RMF FM", 2.03.2001, https://www.rmf24.pl/ekonomia/news-bledy-poprawione,nId,173065 (25.10.2020); The resumption vote on the amendments to the draft act amending certain acts related to the implementation of the budget act also took place on October 29, 2010. The Sejm did not hesitate to use this legal measure to make substantive changes to the previously adopted act. *Sprawozdanie stenograficzne z 77. Posiedzenia Sejmu Rzeczypospolitej Polskiej w dniu 29 października 2010 r. (trzeci dzień obrad)*, Warsaw 2010, p. 226.

[15] A similar case took place on April 12, 2018, when members of the Civic Platform club submitted a motion for a resumption of the vote relating to the motion of the head of the West Pomeranian Branch of the Department for Organized Crime and Corruption of the National Prosecutor's Office in Szczecin of December 20, 2017 for the expression consent by the Sejm to detain and temporarily arrest MP Stanisław Gawłowski. This was due to the fact that the Marshal refused to allow the deputy concerned to speak just before voting and to provide the deputies with information on the request; see *Zatrzymanie Stanisława Gawłowskiego. Posłowie PO złożyli wniosek o reasumpcję*, "Wprost", 13.04.2018, https://www.wprost.pl/kraj/10117672/zatrzymanie-stanislawa-gawlowskiego-poslowie-po-zlozyli-wniosek-o-reasumpcje.html (26.10.2020). Ultimately, after convening and hearing the Council of Seniors, the Marshal decided that there were no grounds to apply resumption; see *Wniosek o reasumpcję głosowania. Wyjaśnienie procedur, przypomnienie faktów – informacja CIS*, Warsaw, 7.05.2018, http://www.sejm.gov.pl/sejm8.nsf/komunikat.xsp?documentId=FF28BE066F89BBA6C12582860055C69D (26.10.2020); *CIS: Wniosek o reasumpcję głosowania ws. posła Gawłowskiego jest bezprzedmiotowy*, "Gazeta Prawna", 14.04.2018, https://www.gazetaprawna.pl/artykuly/1117556,nie-bedzie-ponownego-glosowania-ws-posla-gawlowskiego.html (26.10.2020); see also M. Orłowski, *Byli marszałkowie Sejmu oburzeni brakiem reasumpcji głosowania w sprawie sekretarza PO. „Uzurpacja kompetencji Sejmu"*, "Gazeta Wyborcza", 6.05.2018, https://wyborcza.pl/7,75398,23363354,byli-marszalkowie-sejmu-oburzeni-brakiem-reasumpcji-glosowania.html (26.10.2020).

tion by definition concerns only the voting act and only irregularities related to its conduct justify resorting to this measure. Last but not least, the catalog of these premises includes a situation in which a group of deputies expressing dissatisfaction with the inability to participate in voting appears shortly after the vote has been held. In this case, it is also deemed that there is no factual basis for submitting the motion, as there are no justified doubts referring to the result of the vote[16].

IV. Procedural Mechanism of Resumtion of Voting in the Sejm

The issue of the procedure for applying the institution of resumption of voting in the Sejm requires a separate discussion. The provisions of the Standing Orders of the Sejm establish several major requirements in this respect, without which the resolution on resumption cannot be implemented.

First, a motion may only be submitted at the meeting at which the vote was held. This requirement is a manifestation of a rational assumption that any doubts raised by a given voting act should be removed as soon as possible so as not to perpetuate its effects in the life of the state. This solution must certainly be right, while bearing in mind that it forces a group of members interested in launching this initiative to take dynamic action. In some situations, especially in case of one-day meetings or on the last day of the meeting, this may require some organizational agility on the part of the initiators. It is known, after all, that such a motion must be written, properly justified, won over a group of thirty deputies willing to support it, and finally submitted to the Marshal[17].

Secondly, the application should be submitted to the Marshal of the Sejm. The necessity to submit the application to the Marshal does not arise directly from the Article 189 of the Standing Orders of the Sejm, but is a consequence of creating resumption as a legal measure that goes beyond the catalog of formal motions indicated in the the Standing Orders of the Sejm[18]

[16] P. Sarnecki, *Komentarz do art. 189…*, p. 845.

[17] Ibidem, p. 854.

[18] It should be emphasized that in comparative parliamentary law, resumption is regarded as a mere formal conclusion. K. Complak, *Opozycja parlamentarna…*, p. 39.

(Art. 184 (3) of the Standing Orders of the Sejm). It is worth empatising that if it were otherwise and the legislator included the resumption in this type of motions (which would additionally entail granting the right in this respect to each deputy individually and without the obligation to provide a written justification), then the request for it could be submitted directly, outside the agenda of the meeting or in connection with the discussion, to the person chairing the meeting – either the Marshal of the Sejm or replacing him under the Art. 10 sec. 3 of the Standing Orders of the Sejm. In the current legal situation, however, the motion is obligatorily sent to the Marshal, who first asks for his opinion from the Council of Seniors, and then ultimately decides about its further fate. The decision made here by the Marshal is fully discretionary and arbitrary, which results from the interpretative resolution adopted in 2003 by the Presidium of the Sejm interpreting the provision of Art. 189 of the Rule of Procedure of the Sejm. According to it, the body authorized to assess the condition as to whether the result of voting at a plenary session of the Sejm raises justified doubts is the Marshal of the Sejm, who uses only the opinion of the Council of Seniors[19].

Third, the application submitted to the Marshal must be in writing, and must also contain a written justification (since it is filed "*if the voting result raises reasonable doubts*"). Additionally, it must be signed by a group of as many as thirty Members. The latter requirement must be puzzling, because it is not entirely clear why the legislator demands the signature of so many members of the chamber. It comes to mind here that he wants to prevent the use of resumption by the smallest parliamentary factions (let us remember that a causus in the Sejm is formed by a group of three, and in the Senate by fifteen deputies) as an instrument of political rivalry and thus to reduce the risk of the phenomenon of parliamentary obstruction. If so, one has to be aware of the negative consequences of this decision. It is a fact that with such a restrictive statutory regulation, the right to demand that the vote be repeated is deprived of individual Members who voted incorrectly or who cast their votes with a defective apparatus (and it should be emphasized that the second vote will not always lead to a change in the final result, but in any case, it allows an MP

[19] Resolution No. 42 of the Presidium of the Sejm of the Republic of Poland of November 14, 2003 on the interpretation of the Art. 189 para.1 of the Standing Orders of the Sejm.

to rehabilitate himself in the eyes of voters). When demanding a resumption, they must seek the support of twenty-nine additional MPs, which, in particular, for MPs from small opposition groups and non-attached MPs may be an insurmountable barrier. For this reason, there are sometimes demands in the media sphere to introduce a separate institution – the correction of the voice. Such a solution would be available to each individual deputy who, right after the vote, would like to correct his position to the chairman of the meeting[20].

Fourth, the resolution is passed by a simple majority of votes in the chamber. Due to this requirement, the motion is ultimately decided by the parliamentary majority gathered in the Sejm. As mentioned earlier, the resolution adopted here does not have to be based on substantive criteria, but may result from the political calculations of the parties making up the majority camp. This is a natural risk related to entrusting a decision in this matter (as in any other case) to an authority with a strictly political composition and character.

Fifth, it is forbidden to resume roll-call voting. This prohibition is due to the fact that such a form of voting, consisting in throwing the ballots into a specially prepared ballot box, signing with the name and surname of the deputy, and then counting by the secretaries (the issue takes place in such a way that the establishment of the chamber, read supplement by the secretary of the Sejm, throw their cards into the ballot box in alphabetical order, and then the secretaries appointed by the marshal in insurance 5 open the ballot box and count the votes), excludes the possibility of returning the place of help.

V. Final Conclusions

The analysis leads to several conclusions. Firstly, it is to be welcomed that the institution of the restoration of voting has been regulated on the basis of the provisions of the Standing Orders of the Sejm of the Sejm. Undoubtedly, the existence of legal solutions in this area prevents many interpretative doubts, and at the same time strengthens the position of the opposition parties. Secondly, a positive assessment should also be given to Article 189 normative flexibility, which – through the use of the generally formulated phrase "*when the voting result raises reasonable doubts*" – gives the Sejm a certain "deci-

[20] W. Ferfecki, *Sejmowe pomyłki…*

sion slack". Certainly, given the unpredictability of events in parliamentary practice, it would be difficult or even impossible to list the material premises for the re-establishment in a casuistic manner. Thirdly, the regulation that links the submission of a motion to restore voting with the initiative of at least thirty deputies deserves criticism. Here, the most problematic is the deputy's inability to individually correct his vote when he voted incorrectly or cast his vote in the presence of defective apparatus. The resumption in its current form deprives the right to an effective reaction, which at best results in the deputy's lack of a tool for rehabilitation in the eyes of voters (to prove that he has a different opinion than the one presented during the vote), and at worst – that he has mistakenly influenced the final vote.

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