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Competences of the United States Congress in the Impeachment Procedure

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Słowa kluczowe: senat, procedura *impeachment*, Stany Zjednoczone Ameryki, odwoływanie, stan oskarżenia

Abstract

This article is devoted to the impeachment procedure in the United States of America. The first part of the article outlines a short historical background on the subject. In the following part, the impeachment procedure is characterized in its current form, with particular emphasis placed on the role of the House of Representatives and Senate of the United States of America. The data concerning the processes that took place in the Senate as a result of the impeachment procedure are also indicated.

Streszczenie

Rola Kongresu Stanów Zjednoczonych Ameryki w procedurze *impeachment*

Niniejszy artykuł poświęcony został procedurze *impeachment* w Stanach Zjednoczonych Ameryki. W pierwszej części artykułu nakreślone zostało krótkie tło historyczne dotyczące omawianego zagadnienia. W dalszej części scharakteryzowano procedurę

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impeachment w jej obecnym kształcie, ze szczególnym uwzględnieniem roli Izby Reprezentantów i Senatu Stanów Zjednoczonych Ameryki. Wskazane zostały także dane dotyczące procesów, które odbyły się w Senacie, na skutek wszczęcia trybu *impeachment*.

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I. Introduction

Regarding the impeachment procedure, the Constitution of the United States of America (Art. I, sec. 2, cl. 5) provides that the House of Representatives shall have the exclusive right to prosecute senior officers before the Senate, and the Senate shall have exclusive jurisdiction in cases in which the House of Representatives has indicted them. (Art. 1 sec. 3 cl. 6). The right of Congress to bring charges against the highest state officials is one of the more controversial solutions provided by the US Constitution².

The Constitution of the United States clearly indicates the circle of people who may be indicted. According to Art. II sec. 4 the people are the President, the Vice President, and any civilian officer of the United States³. This means that impeachment cannot be applied to members of the armed forces as they are subject to military law. As far as Union civil servants are concerned, these are departmental secretaries, judges, and heads of independent regulatory bodies. From a formal point of view, the impeachment procedure can be applied to any federal civil servant under the Constitution⁴. The provisions of the Constitution also clearly define which authority is competent to prosecute. According to Art. II sec. 2, only the House of Representatives may do so. The Senate is the authority responsible for prosecuting the accused. According to this provision, a majority of 2/3 of the votes of the Senators present at the meeting is necessary for a conviction. In the same article,

² C.B. Swisher, *American Development Cambridge 1943*, p. 101; T.J. Norton, *The Constitution of the United States, Its Sources and its Application*, New York 1946, p. 129.

³ J. Jaskiernia, *Zagadnienie podstaw do wszczęcia procedury impeachment przeciwko urzędnikom federalnym w prawie i praktyce ustrojowej Stanów Zjednoczonych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1975, No. 4, p. 120.

⁴ R.M. Małajny, *Amerykański prezydencjalizm*, Warsaw 2012, p. 218.

the Constitution stipulates that when an accusation involves a president, the convicting authority is chaired by the President of the Supreme Court, while in other cases, the Vice President of the United States presides⁵.

II. Historical Background

The Fathers of the Constitution of the United States of America took the institution of impeachment from tradition and English law. During the Constitutional Convention, England already had a considerable 400 years of experience with impeachment. This procedure was a powerful instrument, owned by an ever-stronger parliament, which could apply it to the King and his ministers. During the revolution of 1648, the most famous trials took place, which contributed significantly to weakening the position of the executive. Over the years, as the English monarchy weakened, the impeachment also lost its importance⁶.

In general, the impeachment procedure in England could be applied to any subject of the Crown, but it could not be applied to a monarch. The impeachment procedure had all the characteristics of a criminal trial. The consequences of a conviction could be different, i.e. death, loss of property, as well as prison sentences. The king had the prerogative of mercy. The monarch could use it against people who were convicted by the House of Lords⁷.

Although there is no doubt that the delegates of the Constitutional Convention of Philadelphia followed the English tradition of the impeachment procedure, it should be noted that the English version has been largely modified. The fathers of the Constitution assumed that this institution was primarily intended to protect the nation. The delegates wanted to create a legal framework that would function in a system completely different from the strongly criticized English monarchy. One of the goals of the constitution was to create a strong federal power, with a strong single-member ex-

⁵ J. Jaskiernia, *Zagadnienie podstaw...*, p. 120.

⁶ A. Makowski, *Instytucja impeachment w Stanach Zjednoczonych*, "Państwo i Prawo" 1975, No. 12, p. 110.

⁷ A.M. Ludwikowska, *System prawa Stanów Zjednoczonych*, Toruń 1999, p. 152.

ecutive. In James Madison's notes, the author indicates that a preliminary decision was made that the national legislature would elect a national executive for 7 years. In turn, the national executive will be removed, based on an indictment resulting in a conviction. The basis of the accusation could be the neglect of duty, as well as malpractice, i.e. misappropriation by the enforcer of its professional duties. It follows from these considerations that the impeachment procedure against the head of state was the most important goal of introducing this institution⁸.

III. Impeachment Procedure

As already outlined in the first part of the article, in the impeachment procedure, the lower house of parliament – the House of Representatives – charges the official with certain charges. The accusation is dealt with by the Upper House of the U.S. Parliament, the Senate⁹. The impeachment procedure can be applied at the federal level, as well as at the state level. The majority of impeachment cases concern alleged crimes that were alleged to have been committed while in office. Nevertheless, it is noteworthy that there have been several cases in which officials were subjected to impeachment, but the conviction was concluded for crimes they had committed before taking office. The official to whom the procedure is applied remains in post until the trial. Both the trial and removal of the office in case of his or her conviction are separate from the impeachment act itself¹⁰. According to the Constitution, the only penalty in the impeachment procedure that can be imposed by the Senate is removal from office and deprivation of the convicted person of the right to exercise any federal office in the future¹¹.

The Judiciary Committee of the Chamber of Representatives is responsible for examining the case. After examining the facts, the Committee is

⁸ Ibidem, pp. 152–153.

⁹ Data behind the website: https://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm (16.09.2020).

¹⁰ Data behind the website: https://en.wikipedia.org/wiki/Impeachment_in_the_United_States (16.09.2020).

¹¹ Art. I, sec. 3, cl.7 of the Constitution of the United States of America.

obliged to present its conclusions to the Chamber. If the results of the investigation show that there are grounds for accusing the official, the Commission presents articles of impeachment. The Commission's accusations form the basis for a resolution that accuses the official concerned. The official will be put on trial in the Senate if the House of Representatives votes on the articles of impeachment by a simple majority¹². The impeachment procedure may be initiated against the official for specific acts of impeachable offenses. According to the Constitution, these are treason, bribery, crimes, and misdemeanors (Art. II/4).

The mentioned Art. I, sec. 3, cl. 6 of the U.S. Constitution is a continuation of the impeachment procedure of the lower house of the Congress (Art. I, sec. 2, cl. 5). In case that the House of Representatives makes an official charge against a federal official, the Senate is required to award guilt or declare the accused innocent. Even though Senators' powers may be associated with the function of judges, there are many differences between them. Laidler indicates three procedural requirements. The first one is the Chief Justice, i.e. the chairmanship of the Supreme Court. This only applies, if the president of the United States is the defendant in the trial. Art. III, sec. 1, cl. 1, of the Constitution is the first part of the Constitution, in which the most important judge of the most important judicial instance in the United States of America is indicated. The next is the oath. Both its form and content are different from the other types of oaths that members of Congress are required to take. The last requirement is the voting formula. For the defendant to be found guilty, a decision by a majority of at least two-thirds of the senators attending the meeting is necessary. A decision that an official is found guilty of alleged unlawful acts committed in the course of his office is not the same as finding him guilty under civil or criminal law. Namely, a decision of the Senate is only binding for the official's professional activities. Consequently, a person sentenced by the Senate may lose the right to continue to hold his position or to perform other, state functions. Other potential consequences may be awarded as a result of proceedings before the common courts¹³.

¹² A.M. Ludwikowska, *System prawa...*, pp. 153–154.

¹³ P. Laidler, *Konstytucja Stanów Zjednoczonych Ameryki. Przewodnik*, Kraków 2007, pp. 30–32.

It is worth noting that under the impeachment procedure, according to the provisions of the Constitution, the president cannot exercise his right of grace, and the participation of a jury is also excluded. Therefore, as R.M. Małajny points out, the impeachment procedure “is therefore not a normal criminal procedure and deviates from that adopted in Great Britain”¹⁴.

IV. Final Conclusions

The impeachment procedure has been a controversial issue for years. One of its drawbacks is certainly the lack of precision in initiating this procedure¹⁵. As already mentioned, the legal basis is found in the Art. III, sec. 3, cl. 1 of the Constitution. This provision points to the following premises: treason (there is a definition of treason in Art. III, sec. 3, cl. 1), bribery, or other serious crimes – high crimes or misdemeanors. One must agree with the opinion of P. Sarnecki, who indicates that the lack of definition of the grounds makes the impeachment mode very often a procedure of “quasi-political responsibility”. The author emphasizes that the importance of the impeachment procedure is not only demonstrated by the cases in which incompetent attempts were made to initiate it, which resulted in a conviction or only in its initiation. According to P. Sarnecki, the essence of this procedure is a preventive action, which aims to warn against the abuse of power. For this reason, the impeachment procedure is considered to be one of the most important guarantees of proper behavior of those in power¹⁶. One should also agree with the view expressed by R.M. Małajny, which reminds that the basis of the impeachment accusation is the impeachment procedure: “treason, bribery and serious crimes or offenses”. The author points out that the latter, i.e. offenses, refer only to cases in which official duties have been seriously violated, in other words, “compromising the ethos of the position held”. R.M. Małajny also indicates examples of such behavior; he mentions drunkenness, financial

¹⁴ R.M. Małajny, *Amerykański...*, p. 205.

¹⁵ *Ibidem*, p. 203.

¹⁶ P. Sarnecki, *Ustroje konstytucyjne państw współczesnych*, Warsaw 2013, pp. 132–133.

machinations, or an inappropriate ethical attitude. Therefore, in the mentioned situations, we deal with specific guilt, but it does not need to involve a violation of criminal laws. For this reason, the author points out that reasons such as incompetence, incompetence, improper use of discretionary powers, are not sufficient reasons to initiate the impeachment

Table 1. U.S. Senate Processes – Impeachment Procedure

Name of the accused	Function/office	Impacts
William Blount	Senator	Expelled; charges dismissed
John Pickering	Judge	Guilty; removed from office
Samuel Chase	Judge of the Supreme Court	Not guilty
James H. Peck	Judge	Not guilty
West H. Humphreys	Judge	Guilty
Andrew Johnson	President	Not guilty
Mark H. Delahay	Judge	Resigned
William Belknap	Secretary of War	Not guilty
Charles Swayne	Judge	Not guilty
Robert Archbald	Judge	Guilty; removed
George W. English	Judge	He resigned; charges dismissed
Harold Louderback	Judge	Not guilty
Halstead Ritter	Judge	Guilty; removed from office
Harry E. Claiborne	Judge	Guilty; removed from office
Alcee Hastings	Judge	Guilty; removed from office
Walter Nixon	Judge	Guilty; removed from office
William J. Clinton	President	Not guilty
Samuel B. Kent	Judge	He resigned from office
G. Thomas Porteous Jr.	Judge	Guilty; removed from office
Donald J. Trump	President	Not guilty

Source: home page of the Senate of the United States of America, *Impeachment*, https://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm (3.09.2020).

procedure¹⁷. At this point, it seems appropriate to quote the correct view expressed by P.B. Kurland. The author claims that the essence of the act that may give rise to responsibility in the impeachment procedure is the fact that it is classified as an abuse of public trust, and it is up to the Senate to assess the extent of this abuse¹⁸.

It is worth mentioning that the only rights granted in 1787 in the Constitution of the United States by which the legislature can restrict the individual's right to freedom are the right of the Senate to remove officials, as well as the possibility of removing them from public office¹⁹. The impeachment of twenty Senate trials resulted in eight convictions (see the enclosed table for details). Three Presidents of the United States of America were indicted by the House of Representatives. These were Andrew Johnson (1868), Bill Clinton (1998), and the current President of the United States, Donald Trump (2019). All three were acquitted by the Senate and were not removed from office. Bill Clinton's Senate trial began on January 7, 1999, and ended on February 12, 1999. Donald Trump's trial in the Senate began on January 16, 2020, and ended on February 5, 2020. The impeachment trial against Richard Nixon also began, but he resigned in 1974. Besides, the House of Representatives indicted a total of 15 federal judges, one cabinet secretary, and one senator. Eight officials were sentenced and removed from office, all of whom were judges²⁰.

Literature

Jaskiernia J., *Zagadnienie podstaw do wszczęcia procedury impeachment przeciwko urzędnikom federalnym w prawie i praktyce ustrojowej Stanów Zjednoczonych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1975, No. 4.

Kurland P.B., *Watergate and the Constitution*, Chicago-London 1978.

Laidler P., *Konstytucja Stanów Zjednoczonych Ameryki. Przewodnik*, Kraków 2007.

Ludwikowska A.M., *System prawa Stanów Zjednoczonych*, Toruń 1999.

¹⁷ R.M. Małajny, *Amerykański...*, p. 209.

¹⁸ P.B. Kurland, *Watergate and the Constitution*, Chicago-London 1978, pp. 108–109.

¹⁹ P. Laidler, *Konstytucja Stanów...*, p. 32.

²⁰ <https://www.congress.gov/116/bills/hres/755/BILLS-116hres755Senr.pdf> (23.09.2020).

Makowski A., *Instytucja impeachment w Stanach Zjednoczonych*, "Państwo i Prawo" 1975, No. 12.

Małajny R.M., *Amerykański prezydencjalizm*, Warsaw 2012.

Norton T.J., *The Constitution of the United States, Its Sources and its Application*, New York 1946.

Sarnecki P., *Ustroje konstytucyjne państw współczesnych*, Warsaw 2013.

Swisher C.B., *American Development*, Cambridge 1943.