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**Relations between the President and the Senate
in the Light of Provisions of the Constitution
of the Republic of Poland of April 2, 1997**

Keywords: President of the Republic of Poland, Senate of the Republic of Poland, Constitution of the Republic of Poland of 1997

Słowa kluczowe: Prezydent RP, Senat RP, Konstytucja RP z 1997 r.

Abstract

The author describes mutual, constitutional relations between the Senate and the head of state, and asks questions about the perspectives of their modification. The political events of 1989 leading to the reinstatement of a single-member head of state and Senate in Poland made their restitution closely related. At present, the competence and functional dependence of these bodies is low. The President and the Senate share a common view on the constant presence in the doctrinal and political discussion of the problem of changing their political position.

Streszczenie

**Stosunki pomiędzy Prezydentem a Senatem w świetle przepisów
Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.**

Autor opisuje wzajemne, konstytucyjne relacje Senatu i głowy państwa oraz stawia pytania dotyczące perspektyw ich modyfikacji. Wydarzenia polityczne z 1989 r. prowadzące

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do przywrócenia w Polsce jednoosobowej głowy państwa i Senatu spowodowały, iż ich restytucja była ściśle powiązana. Obecnie zależność kompetencyjna i funkcjonalna tych organów jest niewielka. Wspólna dla Prezydenta i Senatu jest natomiast stała obecność w dyskusji doktrynalnej i politycznej problemu zmiany ich pozycji ustrojowej.

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I.

Thirty years ago, with the amendment of the Constitution of the People's Republic of Poland on April 7, 1989, the office of President and Senate was restored in Poland². The political concept underlying this act was based on the strict interdependence of the restitution of these bodies. The later evolution of the system of this union did not extend any further, but the bodies still have a lot in common. It is not about functional and competence dependence. There are few such direct relations detached from the relations between the President and the Sejm. Common for the President and the Senate as constitutional bodies of the state is the constant presence in doctrinal and political discussion of the modification problem of their political position. It also contains radical proposals, such as those aimed to eliminate the Senate or resign from the general election of the President.

II.

The Constitution of 2 April 1997 provides only one independent right for the Senate to influence the President's exercise of power – to give its consent to the management of a national referendum (Article 125(2)). Together with the Sejm, the Senate by virtue of a law grants its consent to ratification and denunciation by the President of international agreements concerning the matters referred to in the Article 89 of the Constitution. As a member of the National

² I have written more on this matter in: *The significance of amendments to the March Constitution of 2 August 1926 and the Constitution of the People's Republic of Poland of 7 April 1989 for political changes in Poland*, "Przeгляд Prawa Konstytucyjnego" 2018, No. 6, pp. 63–72.

Assembly, Senators participate in the enforcement of the President's constitutional responsibility (Article 145) and the recognition of his permanent incapacity to hold office due to his state of health (Article 131(2)(4)).

The President orders elections to the Senate (Article 98(2)), including supplementary elections (Article 283(1) of the Electoral Code³), shortens its term of office as a result of shortening the term of office of the Sejm (Article 98(4) of the Constitution), convenes the first meeting (Article 109(2)), may also address the Senate with a speech (Article 140). The President's authority in relation to the Senate shall also be deemed to be the application of a *veto* to a law passed by both chambers (Article 122(5)).

III.

In accordance with the Article 125 of the Constitution, the President may order a national referendum on matters of particular national interest with the consent of the Senate expressed by an absolute majority of votes cast in the presence of at least half of the statutory number of senators. The Senate shall adopt an appropriate resolution within 14 days of the submission of a draft decision ordering referendum by the President⁴. The Speaker of the Senate may request the President to provide a justification for a draft referendum ordinance including 1) the need and purpose of referendum ordinance; 2) clarification of the content of questions and options for solutions to a referendum case; 3) presentation of the expected social, economic, financial and legal implications of the solutions to a referendum case⁵. The President's obligation to provide a justification is then imposed, but the refusal to execute it does not result in any sanctions⁶.

The doctrine indicates that the Senate's consent to the President's ordering of a referendum is the consequence of division principle and balance of pow-

³ The Act of 5 January 2011 Electoral Code (Dz.U. 2019, item 684, as amended).

⁴ Art. 86 of the Resolution of the Senate of the Republic of Poland of 23 November 1990 Rules and Regulations of the Senate (Monitor Polski 2018, item 846).

⁵ Art. 87 of the Rules and Regulations of the Senate.

⁶ A. Szmyt, *Zgoda Senatu na referendum zarządzane przez Prezydenta*, [in:] *Studia nad prawem konstytucyjnym*, eds. J. Trzeciński, B. Banaszak, Wrocław 1997, p. 255.

ers⁷. In this way, the Senate exercises the controlling function over the President⁸ and is a kind of arbitrator protecting the Sejm, if necessary⁹. Such a construction is to “guarantee the inviolability of legal and structural position of the parliament as a legislative authority”¹⁰, weaken the “anti-parliamentary blade” of the referendum managed by the President¹¹. Perhaps the inspiration for adopting this regulation came from French political practice, especially under the presidency of Ch. de Gaulle, who used the referendum “above the heads of parliament”¹². He treated it as “a mechanism ensuring direct communication between the head of state and the nation, and at the same time an instrument that enabled him to verify the legitimacy of the government obtained in elections initially held by the college of electors and then by general election”¹³.

The political practice seemed to confirm the thesis that the Senate’s power to authorize the President to order a referendum was inhibitory and political in nature. In 2015, the Senate (in which the majority of senators represented the Civic Platform) on May 21 approved the referendum ordered by President Bronisław Komorowski, who came from the same political group, and on September 4 refused to give its consent to President Andrzej Duda, supported by the Law and Justice Party¹⁴. However, in 2018 President A. Duda

⁷ M. Jabłoński, *Rola Senatu w procesie inicjowania i zarządzania referendum ogólnokrajowego – uwagi de lege lata i de lege ferenda*, [in:] *Kierunki zmian pozycji ustrojowej i funkcji Senatu RP*, eds. A. Bisztyga, P. Zientarski, Warsaw 2014, p. 149.

⁸ P. Zientarski, *Kierunki zmian funkcji Senatu RP*, [in:] *Kierunki zmian...*, p. 74.

⁹ M. Kruk, *Polska nauka prawa konstytucyjnego a konstrukcja władzy ustawodawczej w Konstytucji RP – doświadczenia praktyki ustrojowej*, [in:] *Dwadzieścia lat obowiązywania konstytucji RP. Polska myśl konstytucyjna a międzynarodowe standardy demokratyczne*, eds. J. Jaskiernia, K. Spryszak, Toruń 2017, p. 30.

¹⁰ J. Kuciński, *Demokracja przedstawicielska i bezpośrednia w Trzeciej Rzeczypospolitej*, Warsaw 2007, p. 239.

¹¹ P. Sarnecki, *Senat RP i jego relacje z Sejmem (lata 1989–1993)*, Warsaw 1995, p. 90; idem *Prezydent Rzeczypospolitej Polskiej, Komentarz do przepisów*, Cracov 2000, p. 80; T. Słomka, *Prezydent Rzeczypospolitej po 1989 r. Ujęcie porównawcze*, Warsaw 2005, p. 192.

¹² M. Kruk, *Zakres władzy Prezydenta*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2018, No. 1, p. 202.

¹³ Ł. Jakubiak, *Referendum jako narzędzie polityki. Francuskie doświadczenia ustrojowe*, Cracov 2012, p. 257.

¹⁴ Concerning political circumstances and detailed election results see: D. Dudek, *Referendum – instrument czy iluzja władzy polskiego suwerena?*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2018, No. 1, pp. 179–180.

did not receive the Senate's approval for another referendum ordered by him in a vote on July 25, although the Senate was already dominated by the Law and Justice Party. This proves that the President's initiative¹⁵, which concerned consultations on the amendment of the Constitution of the Republic of Poland and was not, as it seems, anti-parliamentary in nature, was subject to substantive and not merely political assessment.

According to Dariusz Dudek, conditioning the referendum ordered by the President to be held on the basis of the Senate's consent is "an expression of excessive restraint in the attitude of authorities toward the position of the head of state". He finds "no significant axiological nor systemic contraindications to make the President's decision in this regard independent, in a spirit of respect for the authority of the Head of State"¹⁶. In my opinion, this would be a very important change that would strengthen the President and weaken the Senate¹⁷. Therefore, it would have to be embedded in a broader political context, as a part of comprehensive concept of governance reshaping.

The article 89 of the Constitution provides for the participation of the Senate in the ratification and denunciation of international agreements. This concerns only specific agreements that relate to the matters listed in this Article¹⁸. This is achieved by means of a law and, as in any other case, ratification laws are submitted to the second chamber for consideration. The prevailing opinion in the doctrine is that "the direct influence of the Second Chamber on the text of ratification law passed by the Sejm may in fact take the form of a resolution on the adoption or rejection of the content of law"¹⁹. Maciej Ki-

¹⁵ Many years earlier such a possibility was indicated by P. Sarnecki, *Senat RP a Sejm i Zgromadzenie Narodowe*, Warsaw 1995, p. 86.

¹⁶ D. Dudek, *Autorytet Prezydenta a Konstytucja Rzeczypospolitej Polskiej*, Lublin 2013, p. 86.

¹⁷ I would agree with S. Bożyk who concluded that the introduction of a solution consisting in the Senate's consent to the referendum ordered by the President strengthened the position of the Senate – *Senat Rzeczypospolitej Polskiej*, [in:] *Izby drugie parlamentu*, ed. E. Zwierzchowski, Białystok 1996, p. 61.

¹⁸ 1) peace, alliances, political or military treaties; 2) freedoms, rights or obligations of citizens, as specified in the Constitution; 3) the Republic of Poland's membership in an international organization; 4) considerable financial responsibilities imposed on the State; 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

¹⁹ M. Masternak-Kubiak, *Umowa międzynarodowa w prawie konstytucyjnym*, Warsaw 1997, pp. 68–69, similar i.a. S. Bożyk, *Senat Rzeczypospolitej...*, p. 61, and P. Sarnecki, *Senat RP a Sejm...*, p. 48.

jowski represents a different position. In his opinion, the Senate can amend the ratification agreement²⁰. As an argument, he quotes Wojciech Sokolewicz's statement that the Senate "participates in the adoption of ratification law on the same principles – constitutional and statutory – that apply in the legislative procedure applied in the adoption of all laws"²¹. However, it does not mean an amendment to the article containing the authorization of the President to ratify a specific agreement, but an amendment to other articles, e.g. the one that specifies the date of entry into force of the law. It seems that this statement should be accepted, because as M. Kijowski rightly writes: "After all, it may be in the interest of the ruling or opposition parliamentary groups to speed up or delay this date"²².

The article 114(1) of the Constitution states that "In cases specified in the Constitution, the Sejm and Senate, meeting jointly under the leadership of the Speaker of the Sejm or in its place, act as the National Assembly". Paweł Sarnecki writes that the Sejm and Senate "melt" in a common "vessel", which is the National Assembly²³. Members of the European Parliament and Senate have identical rights, vote together and have the same voting weight. The Assembly is a separate constitutional body of the state "existing next to the Sejm and Senate"²⁴. All the powers of the National Assembly are related to the President. These include taking the oath from the newly elected President (Article 130), recognizing the President's permanent incapacity to hold office due to his state of health (Article 131(2)(4)) and bringing the President on trial before the State Tribunal (Article 145(2)). The latter two require resolutions adopted by a majority of 2/3 votes of the statutory number of members of the National Assembly, and therefore the vote of one hundred senators who make up the National Assembly may be of significant and sometimes decisive importance.

²⁰ M. Kijowski, *Udział Sejmu i Senatu w ratyfikacji umów międzynarodowych (1919–2003)*, Rzeszów 2004, pp. 242–252.

²¹ W. Sokolewicz, *Ustawa ratyfikacyjna*, [in:] *Prawo międzynarodowe i wspólnotowe w wewnętrznym porządku prawnym*, ed. M. Kruk, Warsaw 1997, p. 100.

²² M. Kijowski, *Udział Sejmu i Senatu...*, p. 239.

²³ *Senat RP a Sejm...*, p. 109.

²⁴ E. Gierach, *Zgromadzenie Narodowe – wybrane zagadnienia. „Infos” 2015, No. 14, p. 3.*

IV.

The President orders elections to the Senate (Article 98(2) and (5) of the Constitution of the Republic of Poland). It is a competence closely related to the management of elections to the Sejm. This constitutional principle is unanimously confirmed by the legislator in Article 257 of the Electoral Code²⁵: “The President of the Republic of Poland orders the elections to the Sejm, which is tantamount to the Senate elections”.

The power in question does not increase the scope of the President’s “real power”. It is not possible for him to use this competence to “strengthen his position” in relation to the Senate²⁶. He shall be bound by the deadline set by the Constitution for ordering. In case of normal expiry of the term of office, the President orders elections no later than 90 days before the end of 4 years from the beginning of the term of office of the Sejm and Senate and the elections must be held no later than 30 days before the end of the term of office (Article 98 (2)). In case of shortening the term of office, regardless of whether the Sejm adopts a resolution or the President’s own decision, the President is obliged to “simultaneously”²⁷ order elections and set their date on a day no later than 45 days from the date of shortening the term of office (Article 98(5)). Violating this duty may be the basis for holding the President to constitutional responsibility²⁸. The President also orders by-elections to the Senate. The situation here is analogous. The Electoral Code states that these elections shall be “administered and conducted within 3 months from the date of the expiry of the senator’s mandate,” but shall not be conducted “within 6 months before the date on which the term of ordering elections to the Sejm expires” (Article 283[2]).

²⁵ K.W. Czaplicki, B. Dauter, S.J. Jaworski, A. Kisielewicz, F. Rymarz, *Kodeks Wyborczy. Komentarz*, Warsaw 2014, p. 601.

²⁶ R. Glajcar, *Relacje Prezydenta z organami władzy ustawodawczej*, [in:] *Prezydent w Polsce po 1989 r. studium politologiczne*, eds. Glajcar R., Migalski M., Warsaw 2006, p. 67; idem, *Instytucja Prezydenta w Polsce, Czechach i Słowacji w latach 1989–2000*, Toruń 2004, p. 172.

²⁷ J. Ciapała believes that a better, more explicit wording would be “on the same day” – *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warsaw 1999, p. 240.

²⁸ L. Garlicki, *Komentarz do art. 98*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz I*, Warsaw 1999, p. 8.

Also the competence to convene the first session of the Senate has a nominal character, “without any significant political importance”²⁹. It is also a “procedural and orderly”³⁰ power. This act must also be executed within a constitutionally defined period (Article 109[2]).

The President also makes the ceremonial opening act of the Senate’s first meeting and appoints the oldest senator (Senior Marshal) as its Chairman, but if the President is unable to do so, the first meeting of the Senate shall be opened by the Senior Marshal himself (Article 30[1] of the Senate Regulations).

Shortening the term of the Senate is a consequence of shortening the term of the Sejm (Article 98[4]), but the Senate may influence the occurrence of circumstances that make it possible. Pursuant to the Article 225 of the Constitution, if within 4 months from the date of submission of a draft budget law to the Sejm, it is not presented to the President for signature, the President may order the shortening of the term of office of the Sejm within 14 days. The Senate may adopt amendments to the budget law within 20 days of the submission of the budget law to the Senate (Article 223). It can also adopt a budget law without amendments³¹. The Senate’s proceedings time and the decision whether or not to make amendments may be decisive in meeting deadline for the budget law to be presented to the President.

The form of direct addressing of the President to the Senate (also to the Sejm and the National Assembly) is a speech (Article 140 of the Constitution). P. Sarnecki describes them as “the most general means by which the President can inspire the activities of the parliamentary chambers”³². The speech is not made the subject of a Senate debate, which should be understood as a ban on direct debates on the speeches at the same sitting³³. However, if the speech were to have the effect of “inspiring” the Senate to take certain actions, it would have to be discussed at the time of the Senate’s deliberations. However, it depends solely on the senators’ will.

²⁹ R. Mojak, *Instytucja Prezydenta w okresie przekształceń ustrojowych 1989–1992*, Warsaw 1994, p. 213; J. Ciapała, *Prezydent w systemie...*, pp. 240–241.

³⁰ R. Glajcar, *Instytucja Prezydenta w Polsce, Czechach...*, p. 173.

³¹ See: M. Zubik, *Budżet państwa w polskim prawie konstytucyjnym*, Warsaw 2001, pp. 207–208.

³² *Prezydent Rzeczypospolitej Polskiej. Komentarz do przepisów*, Cracov 2000, p. 85.

³³ See: P. Sarnecki, *Komentarz do art. 140, [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz I*, Warsaw 1999, pp. 1–2.

The legislative veto of the President is a very important link in the system of inhibitions and balance. It allows the President to influence both chambers of parliament. However, if the Senate adopts a resolution to reject the law in its entirety and then rejects the resolution of the Senate, the veto becomes an instrument of restraint not against both chambers but only against the Sejm, all the more so because the Senate does not participate in the re-adoption of law at the request of the President³⁴. In the doctrine, it has been proposed that to grant this power to the Senate³⁵. This would strengthen the position in the legislative procedure of both the Second Chamber and the President. However, it is necessary to agree with M. Granat and M. Dobrowolski that the adoption of such a measure would undermine the system of authorities and would force to rethink the role of the head of state in the existing parliamentary system of government³⁶.

V.

In the system of governing bodies shaped by the Constitution of 1997, there is no place for a decisive deepening of mutual relations between the Senate and the President. There is no need for that either. Thorough changes in this area would have to be a consequence of the adoption of a concept of the Republic of Poland's political system that would re-shape the position of the President and Parliament. A major reform of the rules for electing the Heads of State or Senators would be crucial in this respect. Resignation from the general election of the President, introduction of proportionality in elections to the Senate or, on the contrary, solutions aimed to "repudiate" these elections (e.g.

³⁴ In the case in which the Sejm rejects amendments to the Act proposed in the resolution of the Senate and then the President passes the bill to the Sejm for reconsideration, the situation is not so unambiguous. In order to consider that as an act of inhibition exclusively against the Sejm, it should be assumed that the veto is motivated by identical reasons as the Senate amendments.

³⁵ W. Sokolewicz, *O potrzebie reformy Senatu*, „Państwo i Prawo” 2001, No. 11, p. 15; L. Jamróz, *Refleksje nad ustrojową pozycją Senatu*, [in:] *Prawo, parlament i egzekutywa we współczesnych systemach rządów*, Białystok 2009, pp. 82–83; R. Chruściak, *Dwuiźbowość parlamentu*, [in:] *Parlament. Model konstytucyjny a praktyka ustrojowa*, ed. Z. Jarosz, Warsaw 2006, pp. 97–98.

³⁶ M. Dobrowolski, *Jaka reforma Senatu?*, „Państwo i Prawo” 2002, No. 5, pp. 79–80.

concept of the local government chamber) applied in different variants and combinations would define the place of both bodies in the political system of Poland in a different way, including their mutual relations.

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