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The Role of the Committee in the Control Function of the Sejm of the Republic of Poland

Abstract: The article discusses the role of the committee in the control function of the Sejm of the Republic of Poland. Committees are one of the key bodies of the Sejm. They perform a significant range of work, both legislative and control. The article discusses the competences of parliamentary committees, highlights the importance of the presence of the most important people in the state at their meetings and indicates the possibilities of increasing the effectiveness of the committee's control activities.

Key words: Sejm, parliamentary committees, legislative, control functions

Under the Constitution, the Sejm has the right of control over the Council of Ministers, and thus also over the entire government administration.¹ The control function may be exercised by the Sejm *in pleno*, its organs and individual parliamentary deputies. This article presents the control powers of one of the organs of the Sejm, i.e., the Sejm committees. It discusses the competencies of the commission in the field of control of the executive power's activities. The paper uses the legal-dogmatic method, and the findings of parliamentary law practice.

The Sejm establishes committees based on the Sejm's Rules of Procedure.² According to its provisions, committees may be permanent and extraordinary. All committees have equal possibilities to exercise their control function.

Committees of the Sejm are one of the most important bodies within which most parliamentary work takes place. It applies to legislative work and to the exercise of other parliamentary functions, including the control function (Kuciński, 2017, p. 10; Pajdała, 2001, p. 131; Garlicki, 1999, pp. 14–15; Zubik, 2018, pp. 100–101). Committees are internal organs and may have only as many powers as the Sejm grants them within the limits of its own competencies. Committees may not have more possibilities to act than the whole Chamber, but some of them may be more precise and therefore more effective, especially if they have statutory powers (Chmaj, 2020, p. 108). The powers of control and the manner of exercising them by Sejm committees shall be specified in the Sejm's Rules of Procedure. They act on the instructions of the Chamber or their own initiative (Kruk, 2008, p. 78).

Powers of Sejm Committees

Within the scope of the audit function, the committees have the direct authority to undertake audit activities within the framework defined by the Constitution and laws.

¹ Art. 95(2) of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 with amendments).

² Resolution of 30 July 1992 Sejm's Rules of Procedure (OJ 2022, item 990).

The committee's control powers are:

- 1) discussing reports, information, reports, conclusions,
- 2) accepting note of documents by way of a resolution,
- 3) taking desiderata,
- 4) taking an opinion,
- 5) commissioning an audit to the Supreme Audit Office,
- 6) visits and examination of activities,
- 7) commission inspections,
- 8) request for attendance,
- 9) request answers to questions,
- 10) request for information and explanations,
- 11) the establishment of permanent or temporary subcommittees to monitor specific thematic areas.

Commissions as organs of the Sejm act collectively. All their powers may be exercised at committee meetings or within the framework of appointed subcommittees.

At its meetings, the commission considers reports and information addressed to it by ministers and heads of supreme state administration bodies, as well as heads of other state offices and institutions. This group will also include post-audit information sent by the Supreme Audit Office and information on the activities of the Ombudsman, the Constitutional Tribunal, and the Supreme Court, but in the case of the latter, consideration should be understood as hearing information and conducting discussions. Commissions may also conduct their own analyses of the activities of individual state administration departments. To this end, committees may commission expertise on specific topics and invite experts to their meetings. Very often, industry experts and stakeholders from a given area are invited to meetings during which individual documents are considered. Consideration of specific documents may end with acknowledging them, adopting an appropriate resolution or motion to reject them, if it is an opinion for the Sejm. The literature considers the question of whether committees can reject a draft submitted to them (Radziewicz, 2010, p. 41). Radziewicz argued that it is unacceptable because the commission should have a legal basis for such action to adopt such a resolution (Radziewicz, 2010, p. 40). However, one should agree with the thesis that it is possible, but most often it does not directly have any legal effects. If the document under consideration has been referred to the committee for consideration, the committee may adopt a resolution on the acceptance or rejection of the report or information at the end of the discussion. It does not require a legal basis, as it is an element of consideration of a given document, without additional consequences for the applicant. Similarly, part of the consideration is a discussion in which parliamentary deputies ask questions and expect answers. The discussion should end with taking a position, which can be positive or negative. It also happens that the chairman ends the debate with the words the "committee has taken note". However, if an objection is raised, it will require a vote, which may result in that the committee rejects the request "to take note of the information", which will result in non-acknowledgement. This procedure is described in Art. 158 of the Sejm's Rules of Procedure with respect to information or positions submitted to it. However, it shall apply by analogy to other documents referred to committees if there are no special regulations concerning them.

One of the forms of postulative control is the possibility of adopting desiderata by Sejm commissions (Radziejewicz, 2018, p. 764). They are not binding and, as indicated in the Sejm's Rules of Procedure, contain the committee's demands under a specific topic.³ The desideratum may be addressed to:

- the Council of Ministers as a whole, i.e., formally to the Prime Minister,
- members of the Council of Ministers,
- President of the Supreme Audit Office,
- President of the National Bank of Poland,
- the Attorney General,
- Chief Labour Inspector.

The statutory catalogue of entities to which the desideratum can be addressed is closed and cannot be extended by the members of the commission.

The content of the desideratum is not regulated by the Sejm's Rules of Procedure. Its boundaries are set by the fact that it is to be applied in "specific matters" and must have a specific addressee. The committee's competence to draw it up is also important. It can be considered that committees should address desiderata to ministries or institutions that are in their area of competence. M. Kruk highlights that desiderata are an intermediate form between the instrument of control and the authoritative one (Kruk, 2008, p. 84), because they should contain postulates, recommendations to be implemented, and the Sejm do not have these competencies, let alone Sejm commissions. The key feature of the desideratum is its postulateness, i.e., the lack of commitment on the part of the addressee. Usually, the desiderata of the commission contain a description of the situation and the postulates made. The content of the desideratum is prepared by the deputies during a committee meeting and shall propose its adoption as an item on the committee's agenda. The committee may also appoint a subcommittee to prepare its content or authorise the bureau of the commission to do so, but the entire desideratum must be adopted by the committee. Each parliamentary deputy may submit comments on the bill, which should be voted on. The desideratum adopted by the committee is forwarded to the Marshal of the Sejm, who sends it to the addressee. The use of this formula gives a higher rank to the document and is a reflection of the principle that it is the Marshal who represents the Sejm externally.

The authority to which the desideratum was sent is obliged to prepare a written response to the submitted postulates within 30 days. This deadline may be extended by the Marshal in agreement, i.e., with the consent of the presidium of the competent committee. The response to the desideratum and its implementation is discussed by the committee. Representatives of the addressee and other interested parties should take part in those deliberations.

If the committee considers the response to the submission insufficient, it may ask the Marshal to send it back to the addressee. If the committee does not receive a reply within the deadline, the desideratum may be renewed. The Sejm's Rules of Procedure also provide the possibility of preparing a resolution of the Sejm on the same matter, which makes it possible to raise the matter to the level of the entire chamber. Desiderata are a rarely used form of dialogue between the Sejm and the government, mainly because

³ Art. 159 of the Sejm's Rules of Procedure.

the parliamentary majority, and thus also the majority in the committees, is not in favour of these solutions. A significant increase in the number of desiderata could occur when it would require not a majority of the members of the committee, but, for example, one third of the members of the committee.

An instrument of control similar to the desideratum at the disposal of committees is the opinion. The procedure for adopting it is very similar, and Sejm's Rules of Procedure directly refer to the desideratum procedure.⁴ Opinions may be addressed to the same entities as desiderata and to all other central offices and state institutions. It is a significant extension of the list of potential recipients. By central offices, we can understand public administration bodies whose area of activity concerns the whole country and are not auxiliary units of other bodies. They must be independent units performing their own tasks with a separate budget. The concept of a state institution is even broader and refers to public administration bodies separated organisationally and budgetarily, which perform public tasks of an authoritative, providing, or auxiliary and advisory nature (Radziejewicz, 2018, p. 768). It means that opinions can be addressed to all state units, but cannot be sent to local governments and their organisational units.

The second important difference is the content of the document itself, because the opinion contains a view on the functioning of a given entity or other aspects of the application of the law in its area of activity. The opinion may or may not contain postulates that should be taken into account in the work of the addressee, as well as the position on a given topic. The commission may decide whether an opinion requires a reply. If so, such a request must be included in its content and it is an obligation on the addressee to express his views on the matters raised in the opinion. The commission may also request information on the subject under review. A reply must be given within 30 days. In case it is unsatisfactory or is not provided, the procedure is the same as for desiderata. According to the Sejm's Rules of Procedure, the position of the addressee must be discussed by the committee. If the committee does not clearly state that it expects the addressee's reply and standpoint, the opinion may not be answered.

Request for Attendance at the Sitting

One of the basic forms of control, which fits into the traditional typology, is the right to demand the presence of the most important officials in the state. Rule 153(1) of the Sejm's Rules of Procedure states that, at the request of the committee bureau, ministers and heads of supreme state administration bodies, as well as heads of other state offices and institutions, are obliged to attend meetings and provide information and reports. It is a very strict regulation that imposes on the heads of all offices and institutions in the state the obligation to actively participate in committee meetings. The commission may summon the head of any unit that has the status of an office or state institution. Local government units are excluded from this scope. The lack of indication of local government institutions may result from the fact that the provision dates back to before 1990, i.e., from the times when local governments did not yet exist. It can be assumed that the heads of all state administration

⁴ Art. 160 of the Sejm's Rules of Procedure.

units are obliged to appear at the meeting of the committee and answer questions from deputies and representatives of the Supreme Audit Office. If the summoned person cannot attend the meeting in person, the Sejm's Rules of Procedure shall provide the possibility of authorising another person in writing to represent before the committee. Unfortunately, the legislation does not provide for any possible sanction against those summoned for their absence from the sitting. It can only be presumed that the committee may ask the superiors of the requested entity within the framework of the general principles of hierarchy in public administration, up to and including the competent minister, to come and provide information. The statutory structure also provides the possibility of giving the floor and asking questions to persons summoned by representatives of the Supreme Audit Office. The legal doctrine considered the question of whether the commission can summon the head of the unit and ask him questions about specific cases pending in a given institution (Radziewicz, 2018, p. 751). The view that the committee has such powers should be accepted, but it does not have the right to issue instructions in specific cases or to exert pressure on individual bodies to behave in a certain way. The commission does not have the power to express its views in administrative enquiries which take place in the various institutions (Wrona, Chybalski, 2013, p. 60).

The right to request attendance at a committee meeting is complemented by the right to request answers to questions. The Sejm's Rules of Procedure shall stipulate that the representatives of the institutions, bodies, and organisations present in the meeting shall reply to requests and observations made by parliamentary deputies at the same or the next sitting. In justified cases, the answer may be given in writing, but it is not specified who is to decide what will be the justification for submitting a written reply. It can be considered that in practice the deputies may request that the answer be given in writing, but also the voluminous material needed to give the answer or the time needed to prepare it may be justified. The chairman shall inform the committee of written replies at its next meeting.⁵ The provision is a guarantee of answering the questions asked. It is a very important power of the committee to obtain information on matters related to its activities. The obligation to provide oral or written answers guarantees the active participation of the representatives of the various institutions and prevents avoidance or completely passive participation in the meeting (Odrowąż-Sypniewski, 2013, p. 121). Lack of answers or their consistent avoidance can only cause consequences related to political responsibility, because the committee itself or the Marshal of the Sejm do not have instruments to discipline persons summoned to a committee meeting. The instrument of requesting a response is a committee mechanism implemented by individual deputies, but it should be considered the prerogative of the whole committee. Individual deputies may benefit from this mechanism, but only in committee meetings.

Commission Inspection

Each committee has the power to audit any institution in the scope related to the implementation and execution of laws and resolutions of the Sejm. It should be noted that the statutory standard introduces the subject of control, but does not specify the entities

⁵ Art. 157 of the Sejm's Rules of Procedure.

that may be subject to it, which should be considered that it applies to all bodies and institutions bound by the Act. The addressees of the audit may be all entities responsible for implementing laws or are obliged to take specific actions to implement solutions. These will most often be central and local government administration bodies, as well as their agendas. As part of the audit, the committee may also carry out activities in other entities if they agree, including private companies that may be interested in the effects of implementing specific legislation.

Matters related to the implementation concern implementing the proposed solutions, the administration's organisational capacity to implement laws, and the possibility of adopting specific regulations. The second objective aspect concerns implementing laws and resolutions of the Sejm. Implementation should be understood as the manner of implementation, but also the impact of laws or a comparison of the intentions contained in the project's explanatory memorandum or the impact assessment presented by the government in the legislative process with the actual impact on the stakeholders of the act. It can be stated that the laws implementation control should be one of the basic elements of assessing the effectiveness of adopted laws. Practice shows that committees very rarely monitor adopted laws. Corrective action is usually taken only in a crisis or obvious problems with the rules application. Constant monitoring of implemented regulations, especially when they concern new solutions, regulations of new industries, or broad amendments to existing laws, should be periodically reviewed so that those who take part in discussions at the draft stage can verify their opinions with reality after a certain period.

The committee's control should be carried out in the direction of gathering information and examining the facts and comparing it with the expected state. On this basis, conclusions may be formulated regarding further statutory amendments or desiderata with postulates of the directions of application of the law. The Commission may use all available sources of information, particularly documents and interviews with stakeholders. Members of the committee may also conduct observations in the field or at the premises of administrations and institutions. The inspection should commence after the committee adopts a resolution specifying the scope and manner of its conduct. The scope should be related to the thematic area subordinated to a given committee, in the case of committees responsible for a specific department of administration, but may also be related to specific phenomena in social and economic life or a specific social group's problems. The way in which visits are carried out is a matter of acceptable means and where they are carried out. It is also possible to appoint a control team or subcommittee to carry it out. The inspection must end with the adoption of a report on its progress by the committee by way of a resolution. It may contain conclusions and postulates that have been established in the course of its conduct. The report is obligatorily forwarded to the Marshal, who delivers it to all parliamentary deputies, which means that everyone can get acquainted with its content. The document itself may also be debated by the Sejm as an item on the agenda of the sitting. Then there is a parliamentary debate on it, and indirectly on the matter that was controlled.

The low popularity of committee inspections among parliamentary deputies may result from the need to vote on relevant resolutions at a committee meeting. As practice shows, the majority in committees retains the majority that supports the government, and

thus is reluctant to carry out control activities in public administration bodies, which it supports in the parliamentary arena.

Visitations

A control mechanism similar to Sejm audits are visits and examination of activities provided in Article 167 of the Sejm's Rules of Procedure. These are special measures which give the committee the power to carry out a field visit. Visits and investigating activities are treated as one instrument, by which we understand the possibility of meetings in the field, enterprises, and public administration bodies. The visit should be included in the committee's work plans. If it has not been included in the work plan, the Presidium of the Sejm may, in justified cases, consent to its conduct.⁶ Proposals for visits may be submitted by any parliamentary deputy, but the decision in this matter is made by the committee by way of a resolution, but if it is proposed to the work plan, it no longer requires a separate resolution. In exceptional cases, the arrangement for visits may be made by the bureau of a committee when it comes to the departure of the whole committee. In matters of trips and visits of subcommittees or teams of deputies, the decision is made by the presidium of the committee or, in exceptional cases, the committee chairman. The chairman shall submit a request for a visit to the Presidium of the Sejm at least two weeks before its planned date to obtain permission for the trip and its organisation. The information submitted to the Presidium of the Sejm should include a list of participants in the trip or visit, justification, the visit's programme, entities visited, topics of the visit, information on events and meetings related thereto, a framework cost estimate, and the need for transport. The chairman is also obliged to notify the competent province governor about the planned visit, regardless of whether the programme provides for meetings with government administration in the field.⁷ Visits and trips of committees are interesting form of verifying the assumptions of the introduced laws. They can take place in Warsaw, in various state institutions, or outside Warsaw. Visits may be a stand-alone control instrument or part of, for example, commission control. The commission may appoint a subcommittee or appoint a composition from among its members to conduct the visit. The essence of visits and away committee meetings is to hold a meeting of a committee or subcommittee outside the seat of the Sejm, most often with the participation of guests and representatives of local institutions. The Sejm's Rules of Procedure give broad powers to conduct inspections and examine the activities of individual entities and companies with the participation of the State Treasury, enterprises, and other state institutions. It means that all business entities owned by a state entity or in which the State Treasury holds shares should accept visits from the Sejm. It applies to all companies with State Treasury shareholding, regardless of the size of state-

⁶ § 1(3) of Resolution no. 10 of the Presidium of the Sejm of 21 February 1996 on the conduct by committees of inspections and audits of establishments and companies with the participation of the State Treasury, enterprises and other state institutions.

⁷ § 5 of Resolution no. 10 of the Presidium of the Sejm of 21 February 1996 on the conduct by committees of inspections and audits of establishments and companies with the participation of the State Treasury, enterprises and other state institutions.

owned shares. W. Odrowąż-Sypniewski indicated that the purpose of this regulation is to enable the Sejm body to assess the manner of administering the assets of the State Treasury (Odrowąż-Sypniewski, 2001, p. 206).

Applications to the Supreme Audit Office

Sejm committees have special powers to request an audit by the Supreme Audit Office (NIK). The request should include the purpose and scope of the control as well as the entity to be subject to it. Each parliamentary deputy may take the initiative to adopt a motion for an inspection under the resolution procedure. The chairman submits the adopted motion to the Marshal of the Sejm, who forwards it to the NIK or returns it to the committee with a reasoned recommendation for reconsideration. If the committee reconsiders the application and adopts it in the same or amended version, the Marshal obligatorily sends it to the addressee.⁸ Committees may request an audit by the Supreme Audit Office also when the work plan of the Supreme Audit Office is being established. The definition of the objective and scope requires the committee to indicate precisely what is to be audited, which area of activity and in what period. Also, the order to designate the entities subject to control requires that specific institutions be indicated. The adopted motion should contain the most precise information so that the NIK has no doubts, especially that the procedure is one-way and there is no possibility of questions to the committee by the NIK bodies. The adopted motion becomes an independent element based on which the President of NIK or an internal body indicated by him must decode the committee's intentions. To a large extent, control activities and the final report may depend on the precision of the formulated application. The Commission may request an audit in any institution subject to the audit capacity of the NIK under separate regulations. The proposed audit may include the way in which the rules are implemented or certain rules are applied in selected institutions.

Request for Information and Explanations

One of the control possibilities is also the appointment by the committee of permanent or temporary subcommittees to monitor specific institutions or social or economic phenomena. Specialised subcommittees hold meetings to which stakeholders with an interest in a given subject are invited. Particularly large Sejm committees often appoint subcommittees to the areas covered by the committee's work. It is a more flexible formula that supports obtaining information about the status of cases in various institutions or entire industries. Subcommittees can meet much more frequently than committees.

In addition to the powers specified in the Sejm's Rules of Procedure, standing and extraordinary committees have the statutory right to request information and explanations from the following entities:⁹

⁸ Art. 162a of the Sejm's Rules of Procedure.

⁹ Article 16(2) of Act of 9 May 1996 on Exercising the Mandate of Deputy and Senator (Journal of Laws of 2022, item 1339).

- 1) members of the Council of Ministers,
- 2) representatives of competent authorities of state institutions,
- 3) representatives of competent bodies of local government institutions,
- 4) social organisations,
- 5) state-owned establishments and enterprises,
- 6) local government establishments and enterprises,
- 7) commercial law companies with the participation of state-owned legal persons,
- 8) commercial law companies with the participation of municipal legal persons.

All these entities are obliged to provide information and explanations at the request of Sejm and Senate committees on matters within the scope of their activities. It is a very wide list of obliged entities, much broader than when sending desiderata or opinions. The Act provisions provide grounds for requesting information, which may be in writing, but may also be invited to participate in a committee meeting and provide oral answers.

Extraordinary Committee Meeting

A specific means of control, one of the few available to parliamentary minorities, is the obligation to convene a committee meeting at the request of at least one third of its composition. Following Art. 152(2) of the Sejm Standing Orders committee meetings shall be convened by the committee chairman upon fulfilment of three key conditions:

- 1) a written request is received,
- 2) signed by at least one third of the overall composition of the commission,
- 3) identification of the case to be considered.

The last condition in practice means that applicants must indicate an item on the agenda. Very often, the composition of persons to be invited to such a meeting is also proposed. According to the Rules of Procedure, the committee shall be convened within 30 days of submitting the request. It is a fair regulation that protects against postponing the case consideration for distant dates. However, there are no sanctions for exceeding this deadline or not convening the meeting. We can only talk about political responsibility and pressure exerted by committee members on the chairman and members of the bureau. Complaints to the Marshal of the Sejm are also possible, but unfortunately, it does not have the authority to be legally authorised. It is the duty of the committee chairman to convene its meeting, but the circle of invited persons is his exclusive prerogative. Applicants may propose persons to invite, but it is up to the chairman to actually invite them. In view of the purpose of establishing a mechanism for convening meetings at the request of a minority, it seems that any obstructive measures that can be used by a parliamentary majority are unacceptable (Radziewicz, 2018, p. 747). It applies particularly to the possibility of changing the agenda at the request of parliamentary deputies during the sitting, especially removing the proposed item from the agenda. The same applies to a possible request for adjournment. All these formal measures could easily be voted on by a majority of committees, but they contradict the purpose of convening the committee. However, this is a finding of practice and doctrine that does not have a specific statutory basis. The natural safeguarding of the rights of a parliamentary minority should be a regulation raising the majority necessary to adopt formal motions during sittings

convened pursuant to Article 152(2) of the Sejm's Rules of Procedure up to two-thirds, which would force more consensual decision-making. The manner of convening the meeting and its formula allows us to consider it to be an extraordinary meeting of the committee, called this way in contrast to ordinary meetings resulting from the adopted work plan or legislative activities.

Summary

Committees are one of the key bodies of the Sejm. They perform a significant scope of work, both legislative and control functions. Analysing the committee's powers of scrutiny, it can be seen that only some are very popular among the parliamentary deputies. It is difficult not to get the impression that some of them are extremely rarely used or not used at all. It is because most powers are the legacy of earlier regulations, enacted before 1989, i.e., at a time when the Sejm was a superior body over other institutions. The second systemic shortcoming is the dependence of control instruments on the parliamentary majority, which has less enthusiasm to control the government administration it supports by nature. The statutory means of control available to Sejm committees look very serious, but due to the close political relations between most committees and the government, they are not used very often. In order to increase the effectiveness of control measures, more powers should be introduced for the parliamentary minority, which by its nature will be more willing to use them to obtain information on the activities of government administration.

One of the possible solutions is to introduce a committee speech, i.e., a solution consisting in a written request to the competent authority with demands or requests for information. In order to obtain the official status of a committee document, the speech should be signed by one third of the committee members and forwarded to the committee chairman, who sends it to the addressee. The speech content should be determined by the applicants without the possibility of interference on the part of the committee chairman. The role of the committee's speech would be similar to that of a desideratum – with an obligation for the addressee to respond, but without the need to consider the answer at a committee meeting.

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Rola Komisji w funkcji kontrolnej Sejmu RP

Streszczenie

W artykule omówiono rolę komisji w funkcji kontrolnej Sejmu RP. Komisje są jednym z kluczowych organów Sejmu. Wykonują one znaczny zakres prac, zarówno legislacyjnych, jak i kontrolnych.

W artykule omówiono kompetencje komisji sejmowych, uwypuklono znaczenie obecności najważniejszych osób w państwie na ich posiedzeniach oraz wskazano możliwości zwiększenia skuteczności działań kontrolnych komisji.

Słowa kluczowe: Sejm, komisje sejmowe, ustawodawstwo, funkcje kontrolne