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Ogólne uwarunkowania i przepisy dotyczące funkcjonowania Senatu RP¹

General conditions and regulations regarding the functioning of the Senate of the Republic of Poland

The text concerns the upper house of the Polish Parliament (Senate). It contains a list of selected issues related to Senate's role and functioning in the Polish legal system. The author, referring to the relevant provisions contained in the Constitution of the Republic of Poland, the Rules and Regulations of the Senate and other legal acts, discusses in the text such issues as election of members of the Senate (senators), senatorial mandate, internal organization and mode of operation of the Senate and authority of this House.

Keywords: ECPRD, Constitution, Senate, Parliament

Prezentowany tekst dotyczy wyższej izby polskiego parlamentu (Senatu). Zawiera zestawienie wybranych zagadnień z zakresu jego roli i funkcjonowania w polskim ustroju prawnym. Autorka, powołując się na odpowiednie przepisy zawarte w Konstytucji Rzeczypospolitej Polskiej, regulaminie Senatu i w innych aktach prawnych, omawia w tekście kwestie takie jak m.in. wybór członków Senatu (senatorów), mandat senatorski, organizację wewnętrzną i tryb pracy Senatu, a także kompetencje tej Izby.

Słowa kluczowe: ECPRD, Konstytucja, Senat, parlament

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1.	Name of the Parliament	According to Article 10 para. 2 of the Constitution of the Republic of Poland, the legislative power is vested in the Sejm of the Republic of Poland and the Senate of the Republic of Poland
2.	Name of the Second/Upper Chamber of the Parliament	The Senate of the Republic of Poland

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1. Composition of the Second Chamber

1.1. How many members are there in the Second Chamber?

1.2. Is there a limit in the number of members of the Second Chamber?

Can the number of members vary (depending, for example, on the population)?

If the answer is yes, according to which procedure can the number of members be modified?

According to Article 97 of the Constitution of the Republic of Poland, the Senate consists of 100 senators elected in single-member constituencies.

2. Election of the members of the Second Chamber

2.1. Are members of the Second Chamber elected, appointed or called in a combination of the two? In case of a mixed system, please indicate how many are elected and how many are appointed.

Please describe also the procedure used for the election or/and appointment.

Senators are elected in accordance with the procedure set out in the Constitution of the Republic of Poland and the Act of 5 January 2011 – the Election Code. Senators are elected for a 4-year term of office, unless the President or the Sejm decides to reduce this term of office in specific circumstances. Senators are elected by direct universal suffrage, by secret ballot. Every Polish citizen who has attained the age of 18 years has active electoral rights, irrespective of his or her sex, nationality, racial identity, religion or the length of residence in Poland. Every Polish citizen who has attained the age of 30 years and is eligible to vote also has passive electoral rights, i.e., he or she has the right to stand as a candidate in elections.

Elections are ordered by the President of the Republic of Poland not later than 90 days before the end of the 4-year term of office of the Sejm and the Senate. The elections are held on a non-working day, 30 days before the end of the 4-year term of office of the Sejm and the Senate. Elections to the Senate are held on the same day as elections to the Sejm. The President announces his decision in the “Journal of Laws” (Official Journal of the Republic of Poland). In addition, the President sets the days on which specific activities associated with the organisation of elections are to be performed. This schedule is called the electoral calendar. Candidates for Senators may be nominated by electoral committees acting on behalf of political parties or voters. Every nomination must be supported by the signatures of at least 2,000 voters. A candidate may stand for election in only one constituency.

The validity of elections to the Senate is ascertained by the Supreme Court, which is also competent to examine election-related complaints against any Senators.

2.2. Is it possible for a Member of the Second Chamber to be also a Member of the First Chamber or any local/regional Assembly?

Article 102 of the Constitution of the Republic of Poland states that no one may be a Deputy and Senator at the same time.

2.3. Is it possible for a Member of the Second Chamber to be also a member of government (either at national, regional or local level)?

According to Article 103 para. 1, the mandate of the Senator shall not be held jointly with the employment in government administration. This prohibition shall not apply to members of the Council of Ministers and secretaries of state in government administration.

2.4. What is the duration of the mandate of the Members of the Second Chamber? Is it different depending on whether they have been appointed or elected? In the case of appointed Members, can they be dismissed by the appointing authority?

The duration of the mandate of the Senator is regulated by Article 98 para. 1 of the Constitution of Poland, which states: „The Sejm and the Senate shall be chosen each for a 4-year term of office. The term of office of the Sejm and Senate shall begin on the day on which the Sejm assembles for its first sitting and shall continue until the day preceding the assembly of the Sejm of the succeeding term of office”.

2.5. Can the Second Chamber be dissolved? If so, under which circumstances?

Due to Article 98 paras 3 and 4 of the Constitution of the Republic of Poland, any shortening of the term of office of the Sejm simultaneously means a shortening of the term of office of the Senate. It is not possible to shorten the Senate's term of office only. According to this provision, the Sejm may shorten its term of office by a resolution passed by a majority of at least two thirds of the votes of the statutory number of Deputies. Furthermore, the President of the Republic, after seeking the opinion of the Marshal of the Sejm and the Marshal of the Senate, may, in those instances specified in the Constitution, order shortening the Sejm's term of office.

The President may shorten the term of office in accordance with the Constitution:

- Obligatory (Article 155 para. 2) – “In the event that a vote of confidence has not been granted to the Council of Ministers pursuant to para. 1, the President of the Republic shall shorten the term of office of the Sejm and order elections to be held”.
- Optional – “if the budget act is not submitted to the President of the Republic for signature within 4 months from the day of submitting its draft to the Sejm” (Article 225).

2.6. Is the mandate of the Members of the Second Chamber imperative or representative?

Senators are representatives of the Nation. They are not bound by any instructions of the electorate (Article 104 para. 1 of the Constitution of the Republic of Poland).

3. Internal organisation and decision-making in the Second Chamber

3.1. What is the quorum, if any, required in the Second Chamber to adopt a decision?

The Senate passes resolutions by a simple majority vote, in the presence of at least half of the statutory number of Deputies, unless a statute or a resolution of the Senate – Rules and Regulations of the Senate provide otherwise (Article 120 of the Constitution of the Republic of Poland). Therefore, the basic quorum is set on $\frac{1}{2}$ of the statutory number of Senators, i.e., 50 out of 100 Senators.

The simple majority vote takes place when there are more votes for than against. Theoretically, it may happen that a resolution of the Senate is passed with one vote for, with no votes against and the rest – 49 abstentions. On the other hand, an equal number of votes for and against means that a resolution of the Senate has not been adopted (in this case the decision referred to in the question would not be adopted).

3.2. What is the default majority (according to parliamentary rules or other source) required in the Second Chamber to adopt a decision (simple/qualified majority, unanimity, etc.)? Please indicate how the default majority is attained (e.g. majority of component members, of votes cast, abstentions are not taken into account, etc.).

See answer to question no. 3.1.

4. Powers of the Second Chamber

4.1. Constitutional reform

Does the Second Chamber participate in the procedure leading to the modification of the national Constitution? Does it have the same powers as the First Chamber in the sense that both Chambers need to agree on the same text?

The Constitution of the Republic of Poland in chapter 12 establishes a special procedure for its amendment. According to Article 235 para. 1 of the Constitution of the Republic of Poland, a bill to amend the Constitution may be submitted by a group of at least one fifth of the statutory number of Deputies, by the

Senate as a chamber of parliament or by the President of the Republic. Amendments to the Constitution are made by means of a statute adopted by the Sejm and, thereafter, adopted in the same wording by the Senate within a period of 60 days (Article 235 para. 2 of the Constitution of the Republic of Poland). A bill to amend the Constitution is adopted by the Sejm by a majority of at least two thirds of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators (Article 235 para. 4).

4.2. Legislative powers

Does the Second Chamber participate in the legislative procedure? Does it have the same powers as the First Chamber in the sense that they need to agree on the same text?

The Constitution establishes a parliamentary system of government. Under this system, legislative power is vested in the Sejm and the Senate; however, in the exercise of this power the chambers are not equal. The Sejm passes bills (considered in three readings), to which the Senate may adopt amendments or resolve upon their complete rejection. Nevertheless, it is the Sejm that decides the final shape of a bill, because it may reject the resolution of the Senate by an absolute majority vote in the presence of at least half of the statutory number of Deputies. The diversity of the roles of both chambers is also reflected in the right to legislative initiative. As regards the Sejm, it may be exercised by a group of 15 Deputies, while in the Senate a resolution must be passed by the whole chamber.

4.3. Budgetary powers: Does the Second Chamber participate in the procedure to adopt the national annual budget? Does it have the same powers as the First Chamber in the sense that they need to agree on the same text?

The Senate participates in the procedure to adopt the national annual budget. Article 223 of the Constitution of the Republic of Poland states that the Senate may, within 20 days following receipt of the Budget Act, adopt amendments thereto.

According to the Rules and Regulations of the Senate, the Marshal of the Senate forwards the Budget Act to appropriate committees in order to examine it. The Budget and Public Finance Committee prepares a Senate draft resolution stating that the Senate accepts the relevant Budget Act without amendments or introduces amendments to this Act presented by the Sejm. Then the Senate passes an appropriate resolution within 20 days from presentation the relevant Budget Act.

4.4. Does the Second Chamber have any power regarding the control of the implementation of the budget (discharge procedure)? Does it have the same powers as the First Chamber?

Disparity between the Sejm and the Senate consists also in that the Sejm exercises oversight over the government. The oversight function includes not only politi-

cal accountability of the government, the Prime Minister and individual ministers to the Sejm, but also a widely understood supervision of implementation of laws by organs of the executive. Therefore, it should be emphasized, that the Senate does not have any power regarding the control of the implementation of the budget.

4.5. Scrutiny over the Government: Does the Second Chamber participate in the procedure to appoint the Prime Minister/President (head of the national executive) or other members of the national government?

The Senate does not participate in the procedure of appointing the Prime Minister or ministers.

4.6. Can the Second Chamber censure the national government or its President (either through an impeachment, a motion of censure or any other procedure)? If the answer is yes, please specify and detail the procedure and the consequences. The Senate cannot censure the Prime Minister, the Council of Ministers or ministers.

4.7. Does the Second Chamber have any other mean to control the national executive?

Please indicate if the Second Chamber can:

- make questions to the national government or request information for scrutiny purposes;
- oblige the Prime Minister/President or any other government member to make a statement in front of the Chamber and answer oral questions;
- create inquiry committees for cases of maladministration.

According to Article 60 para. 3 of the Rules and Regulations of the Senate, the Senators have the right to ask the representatives of the Government for information, opinions or conclusions on the relevant bills being discussed in the Senate, particularly in the Senate committees. Moreover, the Senators have the right to deliver a personal statement at the end of the session. If such statements contain specific conclusions or comments on the relevant state authorities, the Marshal of the Senate forwards such statements to the addressees with the request to take a position (Article 49 of the Rules and Regulations of the Senate).

5. Other high office appointments

5.1. Please indicate if the Second Chamber participates in the appointment of the following offices and, if possible, the procedure and the role of the Second Chamber in it:

- the judges of the Constitutional Court/Supreme Court,
- the Attorney General,

- Ombudsman,
- Members of the National Electoral Board.

5.2. Does the Second Chamber participate in the appointment of any other high office?

The Senate participates in appointing members of several public authorities at national level. The Senate approves the following nominees appointed by the Sejm:

- the Commissioner for Human Rights (Ombudsman),
- the President of the Supreme Audit Office,
- Children's Rights Ombudsman,
- the Inspector General for Personal Data Protection,
- the President of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation,
- the President of Office of Electronic Communications.

The Senate also appoints members of the following collegiate bodies:

- two members of the National Council of the Judiciary of Poland (from among Senate members),
- three members of the Monetary Policy Council,
- one member of the National Broadcasting Council,
- two members of the Council of the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation.

6. Foreign policy

6.1. Does the Second Chamber participate in the procedure leading to the ratification of international treaties? In which way (consent for ratification, merely informed, etc.)? Does it have the same powers as the First Chamber?

According to Article 89 para. 1 of the Constitution of the Republic of Poland, ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, requires prior consent granted by statute — if such agreement concerns:

- 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. Such a statute is adopted in the ordinary legislative procedure.

Additionally, the Constitution provides in Article 90 para. 1 that the Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State au-

thority in relation to certain matters. Any resolution in respect of the choice of procedure for granting consent to ratification is taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies. A statute, granting consent for ratification of an international agreement referred to in para. 1, is passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum.

6.2. Does the Second Chamber have any other powers in the area of foreign policy (no need to refer to specific powers concerning EU legislation or EU affairs)?

The Senate participates in matters associated with Poland's membership in the European Union. Under the Treaty of Lisbon, which has given national parliaments greater powers in the Community law-making process, the Senate has the right, among other things, to send its opinions on identified breaches of the principle of subsidiarity to the European Union bodies.

7. Does the Second Chamber have any other power not mentioned before (i.e., other than legislative power, budgetary power, scrutiny over government, a role in constitutional reforms, in foreign policy and as an appointing authority)?

It should be mentioned that the Sejm and the Senate as the National Assembly receive the oath from a newly-elected President of the Republic of Poland or examine motions for bringing the President to account before the Tribunal of State.

Moreover, the Marshal of the Senate and a group of 30 Senators have the right to file motions to the Constitutional Tribunal to decide whether a statute and other normative acts of national level authorities are compliant with the Constitution or an international agreement.

The Senate recognizes the enforcement of the Constitutional Tribunal's decisions as one of its key obligations. The Senate Rules and Regulations include provisions regulating legislative measures to be taken by the House to enforce Constitutional Tribunal's decisions. Such decisions are passed by the Marshal of the Senate to the Legislation Committee to be examined and for the appropriate motions to be formulated. The Marshal of the Senate may approach competent public authorities with a request for cooperation aimed at enforcing the Constitutional Tribunal's decision. Furthermore, the Senate also approves holding a national referendum. Namely, the Sejm and the President of the Republic of Poland have the right to order a referendum. However, the latter is able to act upon the Senate's approval.

The Senate, as other national-level state bodies, receives inquiries and petitions from various institutions and individuals, mainly requesting interventions, advice and information. The Senate examines reports and information on the activities of several state bodies, such as the report on activities of the National Broadcasting Council, the report of the Constitutional Tribunal on material problems arising from its activities and jurisprudence as well as the following types of reports: of the President of the Supreme Court; of the Commissioner for Human Rights (Ombudsman) on his activities and comments on observance of law and civic freedoms in the country; of the Children's Rights Ombudsman on his activities and comments on observance of children's rights in the country; of the President of the Institute of National Remembrance.