

REVIEWS

A review of the book: Joanna Marszałek-Kawa, *Constitutional Status and Functions of the Sejm of the Republic of Poland Following the Accession to the European Union*, ELIPSA Publishing House, Warsaw 2012, p. 713

by Jerzy Jaskiernia

The monograph of Joanna Marszałek-Kawa concerns one of the key problems of the European integration process: the impact of European Union membership on the position of the national parliament. It is clear that EU membership affects the constitutional status and functions of national legislature in a number of ways.

The author hypothesised the following: „After the accession of Poland to the European Union, both the Polish constitutional status and functions of the Sejm of the RP have significantly changed. The Council of Ministers became an authority that partly assumed its competences, which in practice should be viewed as dominance of an executive over a legislative branch. As a result of accession, prerogatives of the Sejm were significantly

reduced in favour of the government. The fall of legislative sovereignty took place when the amendments made were more and more often assessed.” (p. 11).

Verification of this hypothesis required some research questions. One of the most important ones were the following: Did the constitutional status of the Sejm after accession to the European Union change? Did the changes resulting from the deepening integration process appear in the ways and forms of particular functions of the Sejm? Was the sovereignty of the Polish Sejm limited? Did the changes taking place result in the dominance of the government over the authorities? How far can the Sejm of the RP influence the government in the reality of the EU? What is the mechanism of the Sejm of the RP influ-

encing on the EU's decision-making process? What are the rules of cooperation of the Council of Ministers with the Sejm in the field of the European Union? Are the actions taken by the Polish Sejm strong, moderate or weak ones? Do the new tasks of the Sejm of the RP, especially following ratification of the Treaty of Lisbon, require constitutional sanctions? (p. 11–12).

In Chapter I, constitutional status and functions of parliaments in Member States of the European Union were discussed. Special attention was given to countries that became Member States before 2004 (p. 49) and from 2004 (p. 95).

In Chapter II, transformations of the constitutional status and functions of the Sejm in the context of EU institutional reforms were presented. Both accession preparations (p. 159), and parliamentary activity after the accession to the EU institutional system were taken into account (p. 170). There are also important considerations about the influence of the EU institutional reform on the constitutional status of the Sejm of the RP (p. 219).

The Constitutional function of the Sejm of the RP was discussed in Chapter III. The author addressed the issue of the relationship between constitution and integration process in the context of the stability of constitution (p. 293).

Chapter IV is important as it concerns the legislative function of the Sejm of the RP following accession to the European Union. The author presented the develop-

ment of the law-making functions of parliament (p. 323). She also analysed the role of the Sejm in the process of the Union law enforcement and co-legislation (p. 334). An important part of the discussion concerns law-making at national level as regards to both legislative (p. 356) and budgetary procedure (p. 379).

The Supervisory function of the Sejm of the RP was studied in Chapter V. The author presented there both parliamentary scrutiny in the democratic country (p. 395) and the role of the parliamentary opposition in carrying out control (p. 416). The following instruments of control functions became the subject of the analysis: motion of censure (p. 423), budgetary control (p. 426), the constitutional responsibility of the government (p. 434), parliamentary debates and provision of ongoing information by the Council of Ministers (p. 457), parliamentary resolutions, declarations, appeals and statements (p. 463) and individual control measures (p. 466). The participation of the Sejm committees in carrying out the supervisory functions of the Sejm was also enhanced (p. 477). Considerations of the supervisory function following accession to the European Union are particularly important parts of the dissertation (p. 528).

In Chapter VI, creative function in the context of internal organisation of the Sejm was presented.

Finally, in Chapter VII, the author concentrated on the new tasks of the Sejm

following accession to the European Union. Not only did she focus on the tasks (p. 582), but presented their fulfilment and searching for new methods and tools as well (p. 602).

The layout of the writing is coherent and logical. The author bases her considerations on the standard functions of the Sejm, and emphasising them seems to be relevant. Nevertheless, the detailed analysis raises the question about the title which suggests that the author tends to concentrate on the consequences of EU accession to the constitutional status of the Sejm. This can also be concluded from the range of specific questions which the author was trying to answer. However, in the monograph she tends to present the constitutional status as such while the changes that EU membership brought are only an addition. There is no doubt that such an attitude has a lot of cognitive qualities for those interested in the way the functions of the Sejm are carried out. Nevertheless, it weakens „the European thread” which, by choosing a different methodology, could have been treated with deeper consideration.

In spite of these reservations, it should be noted that mainly in Chapter VII the Author emphasised a number of changes in competences and functions that took place in parliament as a result of EU membership (p. 585). The Legislative monopoly of the Polish Sejm was weakened at the cost of governmental (or better

“executive”) entity – the Council of Ministers, European Commission and European Council (p. 585). The Sejm of the RP was „deposed” by the government from the position of supreme legislator, as it cannot constitute on issues governed by EU regulations. Indeed, it has to adapt laws that aim at implementation of directives (p. 587). One might only wonder whether the term „deposition” is fully adequate here, since the Sejm was not deprived of its legislative function. However, its limitation is beyond doubt as it covers 2/3 of legislative competences and even 80% of economic affairs. Nevertheless, it is not „deposition” for government but for the EU legislative system (The Council of the European Union, European Parliament); this took place due to changes in the system of competences resulting from EU membership. While assessing the existing situation, the fact that might not be left out of account is the compensating aspect i.e. the influence of national parliament and therefore also the Sejm on the EU legislative process. It is of particular importance in the context of entitlements to control the principle of subsidiarity which were consolidated in the Treaty of Lisbon.

In the context of subsidiarity control the author presented interesting considerations on the COSAC Meeting. She drew attention to the opinion of the Council of the European Union that in its position of 25–26th June 2006 clearly encouraged

parliaments to intensify cooperation on monitoring the principle of subsidiarity. Until the entry came into force the Treaty of Lisbon COSAC actively encouraged national parliaments to intensify cooperation on monitoring the principle of subsidiarity. Surprisingly, at the XLIII COSAC Summit in Madrid 31st May – 1st June 2010 it was established that control over the principle of subsidiarity could not be a priority of this authority any more. COSAC undertakes control only if explicitly requested by the Presidency. One of the conclusions reached at the Summit was that COSAC should continue to „concentrate on matters related to the improvement of effectiveness of parliamentary supervision on EU issues. Therefore, COSAC encourages national parliaments to increase the use of IPEX and other forms of cooperation in order to ensure an interrelated exchange of information on relevant actions and positions”. It has also been recognised that „conference meetings with other parliaments offer a unique opportunity for interparliamentary exchange of best practice and information on monitoring governmental activities and for hearing and asking about the position of other parliaments on many EU issues” (p. 589).

This development in the situation is surprising. Upon the entry into force of the Treaty of Lisbon and giving national parliaments supervisory function to fulfil the rules of subsidiarity, COSAC seemed

to have become a particularly valuable forum in the process of coordinating actions of national parliaments. This is because COSAC is a unique platform thanks to which national parliaments will be able to reach a consensus regarding the infringement of the principle of subsidiarity by achieving the required 1/3 of votes. For this reason it is not very clear why COSAC resigned from the fulfilment of this task as its first priority. Was it supposed to marginalise other tasks of COSAC or was it to prevent it? Or perhaps the effectiveness of the task proved to be limited so that COSAC recommended that national parliaments use other methods? It may also be surprising that COSAC should undertake control only if explicitly requested by the Presidency. The Presidency is dominated by executive authority and, logically, the rule of subsidiarity should be controlled by this authority. If the executive body were to decide on the activity of COSAC in this respect, it would weaken the entire control mechanism that was crucial to limit the “democratic deficit”. Certainly, this issue needs to be explored in more depth.

A table on pages 590–592 which presents systems to monitor the rule of subsidiarity in EU Member States is very interesting. There is however a question if based on data of the COTAC report of 2005 was sufficient here. For this mechanism the provisions of the Treaty of Lisbon entered into force on 1st December 2009 are of key

importance, so it is essential to check what the monitoring of the rule of subsidiarity is now – when national parliaments acquired new rights. It will then appear that there is no reason to include the Polish Parliament among those where these monitoring procedures do not exist.

The author properly balances the consequences of EU membership to the position of national parliament. She writes: „With so many voices pointing out that EU membership lowered the rate of national parliaments, it must also be stressed that the Sejm participates in EU decision-making process by assessing EU documents. I am convinced that after the accession, the marginalisation of the constitutional status of this body did not take place. Undoubtedly, the EU integration process resulted in its modification. For this reason, it is now of vital importance to actively involve the Sejm in decisive actions, so that it could be valued in this way” (p. 592).

The Author also expresses an interesting opinion on identification of new functions of the Sejm which were as a result of EU membership. She writes: „In my opinion, it is more appropriate to

concentrate on searching for ways to improve the rules and procedures of cooperation between legislature and government rather than to create new functions for the Sejm. This should be reflected in statutory and constitutional provisions. Precise defining of these new functions of the Sejm will constitute a basis for improvement of its constitutional status” (p. 620).

The reviewed monograph contains numerous observations which contribute to the understanding of the role of the Sejm in the contemporary Polish constitution that is not only restricted to consequences of Polish EU membership. The text is written in a clear and easily accessible language. The Author gathered excellent factual data which shows different aspects of the functioning of the Polish Parliament. She also made extensive use of scientific, domestic and foreign literature. Not only should this study respond in scientific communities but also in political ones – those responsible for modelling the constitutional position of parliament. Moreover, this study will inspire other scientists to make their partial analyses.