Articles

Studia Iuridica Lublinensia vol. 31, 5, 2022
DOI: 10.17951/sil.2022.31.5.187-199

Sławomir Patyra
Maria Curie-Skłodowska University, Poland
ORCID: 0000-0002-6331-9006
slawomir.patyra@umcs.pl

Participation of the Polish Senate in the Legislative Process: Towards Equal Bicameralism?

Udział Senatu Rzeczypospolitej w procesie ustawodawczym: ku dwuizbowości równorzędnej?

ABSTRACT

The article deals with the issue of relations between the Sejm and the Senate in the procedure of exercising its legislative function by the parliament. The author points out that the current Constitution of the Republic of Poland of 2 April 1997 greatly limits the influence of the Senate on the legislative process, which refers to the Polish systemic tradition. In this way, the Constitution adopts an extremely asymmetric bicameral model, despite the fact that both chambers of parliament in the Polish system are perceived as an organ of the legislative authority. The author critically assesses the regulations in force from the point of view of the axiology of the democratic system and postulates strengthening the Senate's position in the implementation of the legislative function.

Keywords: bicameralism; legislative process; system of government

SYSTEMIC POSITION OF THE POLISH SENATE IN HISTORICAL EXPERIENCE

The bicameral nature of parliament plays an important role in maintaining a balance between the legislative and executive powers. Referring to Montesquieu's concept of separation of powers, expressed in the canonical treatise *The Spirit of the*

CORRESPONDENCE ADDRESS: Sławomir Patyra, PhD, Dr. Habil., Professor at the Maria Curie-Skłodowska University (Lublin), Head of the Chair of Constitutional Law, Faculty of Law and Administration, Institute of Legal Sciences, Maria Curie-Skłodowska University (Lublin), Plac Marii Curie-Skłodowskiej 5, 20-031 Lublin, Poland.

Laws, the existence of two chambers (houses) of parliament, differing in the way of their establishment and mode of operation, but at the same time performing the lawmaking function, is a mechanism intended to internally harness the legislature.[1] Montesquieu's idea of shaping a system of government based on the division of legislative, executive and judiciary powers was at the core of the constitution of the reborn Republic of Poland, adopted on 17 March 1921.[2] The parliamentary-cabinet system introduced by it was modelled on the solutions of the French Constitution of 1875. Instead of the power-balancing mechanisms, the provisions of the March Constitution clearly emphasized the principle of the domination of the Sejm, to which the Council of Ministers was subordinated, contemptuously dubbed as an "additional Sejm committee".[3] The position of the Sejm was not balanced by the "reigning but not ruling" President of the Republic of Poland, and even less so by the Senate as the second house of parliament. Despite the fact that the need to maintain symmetry in the competences of the Sejm and the Senate (e.g. J. Buzek and S. Estreich) was strongly advocated in the course of work on the constitution, the authors of the first constitution of the independent Polish State opted for the formula of unequal bicameralism. This decision appears as a kind of paradox, considering the fact that in the work on the constitution, the need to establish the second chamber used to be justified by referring to such noble values as the reference to the native Polish parliamentary and independence tradition.[4] However, these grandiloquent arguments were not accompanied by any coherent concept of the Senate's participation in the decision-making process.[5] As a result – as M. Rostworowski aptly put it – the March Constitution developed a "hobbling bicameralism".[6] Thus – contrary to Montesquieu's vision of bicameralism as the legislature's internal brake – the Senate in the March Constitution could not neutralize the hegemonic position of the Sejm, which was one of the factors of political destabilization of the then political system.

Due to a widespread criticism of the "Sejmocracy" introduced by the March Constitution, the basic principles of the new political system of the Republic of

---

[1] Ch. de Montesquieu, *O duchu praw*, Warszawa 1927, p. 74 ff.

[2] Act of 17 March 1921 – Constitution of the Republic of Poland (Journal of Laws 1921, no. 44, item 267), hereinafter: the March Constitution.

[3] W.L. Jaworski (*Konstytucja z dnia 17 marca 1921. Prawo polityczne od 2 października 1919 do 4 lipca 1921*, Kraków 1921, p. 6) stated that in the March Constitution "power was concentrated in the Sejm, that is in the random Sejm majority".

[4] Cf. P.B. Zientarski, *Organizacja wewnętrzna Senatu. Studium prawno-ustrojowe*, Toruń 2011, p. 24.

[5] For more detail, see S. Patyra, *Wszystko już było, czyli dziedzictwo polskiego parlamentaryzmu XX wieku*, "Przegląd Prawa Konstytucyjnego" 2021, nr 4, pp. 79–80.

[6] See M. Rostworowski *Ustawodawstwo*, [in:] *Nasza Konstytucja*, Kraków 1922, p. 53.

Poland were built, set out in the Constitutional Act of 23 April 1935.[7] The principle of sovereignty of the nation was replaced by the principle of sovereignty of the state. The principle of separation of power and balancing the powers in the state was rejected, replaced by the unity and indivisibility of power of the President of the Republic. The departure from the principle of separation and balance was primarily aimed at further weakening the parliamentary position in terms of both legislative and control functions. At the same time, the process of building a new state elite was initiated, but this time the main source of its selection was not the Sejm. While weakening the Sejm, the April Constitution strengthened the position of the Senate, but it did not lead to a state of balance between the chambers. The Sejm retained the leading role in the performance of the functions of parliament. But the second chamber was granted controlling responsibilities by participating in the procedure, though very limited, of holding the Cabinet politically accountable. By involving in the procedure of rejection of the presidential veto on the laws, the participation of the Senate in the legislative process was also strengthened. This strengthening was not only part of the implementation of the above-mentioned elite replacement project, but was also aimed at limiting the real influence of the political opposition on the composition of this chamber.[8] The Sejm remained a "common and party-based" body, which made it a kind of Polish equivalent of the House of Commons of the UK. The Senate, on the other hand, became an elite assembly in a sense, elected by those citizens who – referring to Montesquieu – were outstanding in their "knowledge and honours", which implied an association with the House of Lords and additionally was to justify the strengthening of its prestige in the system of authorities.[9]

The restitution of the Polish Senate in 1989[10] once again stirred a discussion on the model of bicameralism of parliament, revealing political and doctrinal disputes and controversies about this systemic issue.[11] Like in 1921, the reinstatement of the Senate was accompanied by a pompous argumentation, referring to the symbolism of the freedom and independence of the Republic and the return to democratic traditions. At the same time, similarly to the experience of the period of the March Constitution, the second chamber of parliament was established without a far-reaching vision of its place and role in the structure of the legislature, despite the fact that, until the parliamentary elections of 1991, the Senate remained the only organ of legislative

[7] Journal of Laws of the Republic of Poland 1935, no. 30, item 227, hereinafter: the April Constitution.

[8] For more detail, see W. Kowalski, *Koncepcje ustrojowe izby wyższej parlamentu w II Rzeczypospolitej*, Warszawa 2014, pp. 240–242.

[9] See S. Patyra, *op. cit*., pp. 84–85.

[10] Act of 7 April 1989 amending the Constitution of the People's Republic of Poland (Journal of Laws 1989, no. 19, item 101).

[11] See P.B. Zientarski, *op. cit*., p. 11.

power established as a result of free and democratic elections. An eminent expert on the issues of the Polish Senate, W. Orłowski, pointed out that both the course of work on the amendment of the Constitution of the People's Republic of Poland in April 1989 and its final outcome showed a particular concern in the decision-making elite that the restitution of the Senate would not undermine the supremacy of the Sejm in the system of state organs.[12] The reasoning behind the Senate's restitution was just as aptly commented by K. Skotnicki: the decision to create the Senate was ill-considered almost from the beginning.[13] In the course of the Round Table talks, that decision was accompanied neither by a profound historical reflection on the experiences of the functioning of this chamber in the Second Republic, nor by an analysis of the results of legal comparative research into the possibilities of employing bicameralism to effectively realise the systemic functions of the legislature. Looking in retrospect, there is no doubt that the guiding idea behind the restitution of the Senate was to include the political opposition in the structures of the state according to a compromise formula: "The democratically elected Senate in exchange for the President with broad blocking powers against the parliament elected by the non-democratic National Assembly".[14] The April amendment of the Constitution of the People's Republic of Poland modified the original arrangements of the Round Table, as far as the influence of the Senate on the legislative process was concerned: after all, a law returning from the Senate was to be passed again with a qualified two-thirds majority in the Sejm, while another procedure was adopted in the amendment: the two-thirds majority was required in the Sejm for non-adoption of the Senate's position.

An attempt to correct the system of government, undertaken in the Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland and on local self-government,[15] reduced the influence of the Senate on the legislative process by lowering from qualified to absolute the majority required in the Sejm to reject the position of the Senate about a bill. Moreover, the procedure for submitting a law to the President of the Republic for signature was changed. In the absence of objections from the Senate to a law passed by the Sejm, under the amendment of April 1989 the legislative process formally ended in the Senate, the symbolic expression of which was the passing of

[12] See W. Orłowski, *Problem dwuizbowej struktury parlamentu w latach 1989–1997*, [in:] *Polska lat dziewięćdziesiątych. Przemiany państwa i prawa*, eds. T. Bojarski, M. Mozgawa, M. Nazar, vol. 3, Lublin 1997, p. 67.

[13] See K. Skotnicki, *Senat III RP – nieprzemyślany czy niepotrzebny?*, [in:] *Dwadzieścia lat transformacji ustrojowej w Polsce*, ed. M. Zubik, Warszawa 2010, p. 227.

[14] Cf. J. Ciemniewski, *Dwuizbowość w systemie konstytucyjnym III Rzeczypospolitej*, "Przegląd Sejmowy" 2010, no., p. 53 ff. On this topic, see also K. Skotnicki, *Konstytucyjne uwarunkowania wyborów do Senatu RP*, [in:] *Kierunki zmian pozycji ustrojowej i funkcji Senatu RP*, eds. A. Bisztyga, P. Zientarski, Warszawa 2014, p. 53.

[15] Journal of Laws 1992, no. 84, item 426, as amended, hereinafter: the Small Constitution.

an adopted law to the President by the Marshal (Speaker) of the Senate. A different solution was adopted in the Small Constitution – regardless of the position of the Senate, a law could only be referred to the President by the Marshal (Speaker) of the Sejm. Thus, a formula was adopted which is still in force today, according to which the legislative process begins and ends in the Sejm.

Apart from the sphere of normative solutions, the process of exacerbating the asymmetry between the Sejm and Senate was also taking place in the case law of the Constitutional Tribunal. The most spectacular decisions in this area certainly include the ruling of 23 November 1993,[16] in accordance with which the Tribunal differentiated the possibilities of the Senate's influence on the legislative process, depending on whether a law previously enacted by the Sejm had the character of original regulation or was an amendment to a law already in force. With regard to the second of the variants indicated, the Tribunal stated that when a Sejm law amend an already existing law (the so-called amended law), the Senate may propose amendments only the law referred to it by the Sejm, i.e. the amending law, without the option to propose amendments to the provisions of the existing law not covered by the amendment in question.

NORMATIVE MECHANISMS OF SENATE'S INFLUENCE ON THE LEGISLATIVE PROCESS UNDER THE PROVISIONS OF THE CONSTITUTION OF 1997

The Constitution of the Republic of Poland of 2 April 1997[17] retained the form of a two-chamber parliament, but, as in the case of the March Constitution, during the work on the Constitution the fate of the Senate had long been uncertain. Ultimately, it was decided to keep the Senate within the structure of the parliament thanks to three votes at a meeting of the Constitutional Committee of the National Assembly.[18] As a result, the deliberations on whether the Senate was supposed "to be or not to be" in the legal-political system were so long-lasting, that after resolving this dilemma there was no much time to reflect on its place in the two-chamber parliament. At the same time, the Constitution strengthened the position of the Sejm to the extent going beyond the formula of the balanced powers, as expressed

[16] K 5/93, OTK 1993, no. 2, item 39.

[17] Journal of Laws 1997, no. 78, item 483, as amended, hereinafter: the 1997 Constitution or the Constitution. English translation of the Constitution at: https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 10.12.2022).

[18] See R. Chruściak, *Parlament w projektach Konstytucji RP, w dyskusji konstytucyjnej oraz w konfrontacji z pozycją parlamentu w nowych konstytucjach państw Europy Środkowej i Wschodniej*, [in:] *Założenia ustrojowe, struktura i funkcjonowanie parlamentu*, ed. A. Gwiżdż, Warszawa 1997, p. 72.

in Article 10 (1) thereof.[19] Thus, the Senate's position in the structure of the parliament – though formally unchanged from the time of the Small Constitution in force – was indeed further weakened.

Under the legislation currently in force, the Senate participates in the legislative process to a limited extent. In addition to the right of legislative initiative, it may take a position on a law passed by the Sejm, within the limits set out in Article 121 of the Constitution. In accordance with paragraph 2 of that Article, the Senate may, within 30 days of submission of the law, may adopt it without amendment, adopt amendments or resolve upon its complete rejection. In the case of a draft Budget Act, the Constitution reduces this time limit down to 20 days (Article 223), while in the case of laws adopted as a matter of urgency, to 14 days (Article 123 (3)). From the point of view of the influence of the second chamber on the course of the legislative process, it is important that the Senate votes on a law adopted and not just drafted. This means that the Senate actually provides opinion on what has already been passed by the Sejm. In the context of the relationship between the two chambers of parliament, a symbolic meaning should be attached to the construction of Article 121 (2) second sentence of the 1997 Constitution. It stipulates that if the Senate does not adopt a relevant resolution within 30 days of the date of submitting, the law shall be considered adopted in the wording passed by the Sejm. The aforementioned regulation clearly fits into the formula of unequal bicameralism adopted by the Constitution.

The regulation in Article 121 (3) of the 1997 Constitution does not differentiate the Sejm majority required to reject the Senate's position, regardless of whether it concerns amendments proposed by the Senate or a proposal to reject the bill in its entirety. Taking into account the importance of the Senate's position for the further course of the legislative proceedings, this construction may raise doubts – the specific gravity of the second of these variants is, after all, incomparably more significant for the fate of the law concerned. Therefore, if amendments are rejected in the Sejm by an absolute majority, the possibility of the Sejm rejecting the position questioning the bill in its entirety by a qualified majority should be considered.

Similarly to the period in force of the Small Constitution, the case law of the Constitutional Tribunal under the current Constitution not only confirmed, but even strengthened, the effect of asymmetry between the Sejm and the Senate regarding the implementation of the legislative function, in relation to its normative model.[20] This is evidenced, among other things, by the judgment of the Tribunal of 23 Feb-

[19] As aptly commented by P. Sarnecki (*„Parlamentaryzacja" systemów rządowych w Polsce, Finlandii i Chorwacji w świetle ostatnich przekształceń konstytucyjnych w tych krajach*, [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej. Księga jubileuszowa dedykowana prof. Marii Kruk-Jarosz*, eds. J. Wawrzyniak, M. Laskowska, Warszawa 2009, p. 287), the strengthening of the Sejm was "a certain step back" towards a parliamentary system which was at least "less rationalised".

[20] Cf. L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2021, pp. 269–270.

ruary 1999 (K 25/98), stating that the Constitution maintained the model of asymmetrical bicameralism, in which the Senate is a component of the legislative power, but its scope of responsibilities and powers are not identical to the scope of responsibilities and powers of the Sejm. This is so because the position of the Sejm in the legislative process is privileged. The Senate is only supposed to work on a law "of such content, shape and size as was adopted by the Sejm". This view was confirmed by the Tribunal's judgments of 19 June 2002 (K 11/02) and 24 June 2002 (K 14/02). In the latter case, the Tribunal made it clear that the scope of Senate amendments to the Act depends on the scope of the law passed by the Sejm as the host of the legislative process. The Tribunal adopted a different view of perceiving the role of the second chamber in the legislative process only in the context of the "European" function of the parliament, expressing the view that the Sejm and the Senate should be treated as two equal chambers of the Polish parliament.[21]

Despite the restrictions on the Senate's participation in the law-making process, resulting both from normative structures and from constitutional judicial decisions, in the period under the current Constitution, the second chamber has undertaken actions that constitute a kind of added value in the Polish legislative process. One of the most important actions has become the initiation of legislative proceedings aimed at implementing the judgments of the Constitutional Tribunal. Scholars of constitutional law point out that the obligation to enforce judgments of the Constitutional Tribunal by taking specific legislative actions results from the axiology of the Constitution, in particular from the principle of the rule of law (Article 2), the principle of legalism (Article 7) and the principle of supremacy of the Constitution in the sources of law (Article 8 (1)). It is also directly related to the principle of final character and universally binding force of the Tribunal's judgments (Article 190 (1)).[22] The amendment to the Rules of Procedure of the Senate, adopted by the resolution of 9 November 2007, introduced a regulation that institutionalized that procedure.[23] Pursuant to the provisions of Section IXa of the Rules of Procedure, as required by the Marshal of the Senate, the Senate's Legislation Committee examines the necessity to take actions aimed at implementing the judgment of the Constitutional Tribunal. Then, in consultation with the competent committees, and with the participation of experts, it applies for an appropriate legislative initiative along with a proposed bill, the content of which results from the judgment of the Tribunal. The

[21] See judgment of the Constitutional Tribunal of 12 January 2005, K. 24/04. As pointed out by P. Zientarski (*op. cit*., p. 13), that view was criticised by some scholars in the field of constitutional law.

[22] See A. Rytel-Warzocha, A. Szmyt, *W kręgu zagadnień Senatu RP*, Gdańsk 2020, p. 65.

[23] Resolution of the Senate of the Republic of Poland of 9 November 2007 on the amendment of the Rules of Procedure of the Senate (Official Gazette of the Republic of Poland "Monitor Polski" 2007, no. 86, item 925).

bill may include legislative proposals that cover only changes to the current laws aimed at the enforcement of the judgment and their necessary legal consequences.

Summarizing the discussion, it should be clearly stated that the model of parliamentarism adopted in the Republic of Poland fits in the formula of unequal bicameralism, with the clearly privileged position of the Sejm as compared to the Senate, with respect to all the functions assigned to the parliament: controlling, creative and legislative.[24] This model duplicates the solutions originally adopted in the March Constitution and confirmed with the restitution of the Senate in 1989, assigning the second chamber the tasks in the legislative process that are subsidiary to those of the Sejm. The scholarly opinion rightly argues that the main reason for the Senate's marginalization in the legislative process is just the fact that the regulation on the Senate's participation in the performance of parliamentary system functions has not changed since the Senate was restored in 1989, despite the fact that the shape of the system of government has radically changed since then. Article 121 of the 1997 Constitution still identifies statute as the work of the Sejm, which radically limits the participation of the second chamber in this process.[25]

An exception to the rule of domination of the Sejm in the legislative process are the competences of the Senate related to the procedure for passing a law approving the ratification of an international agreement under which the Republic of Poland would delegate to an international organisation or body the powers of state bodies in certain matters (Article 90 (2) in conjunction with Article 90 (1) of the 1997 Constitution) and the participation of the second chamber in the procedure for passing a law amending the Constitution (Article 235 (2) of the 1997 Constitution). As a result, contrary to the argument, promoted in the public debate, about the Senate as the "chamber of legislative reflection", it is regarded by the Sejm as, at most, a kind of "legislative office" whose comments are taken into account only when they concern technical and editorial issues and not the direction of the normative solutions adopted.[26]

FINAL CONCLUSIONS AND RECOMMENDATIONS

The current constitutional regulation that determines the model of the legislative process, together with the practice of the political system, causes a state of a kind of systemic dissonance. The Senate has a much weaker position in the law-mak-

[24] Cf. Z. Czeszejko-Sochacki, *O niektórych problemach konstytucyjnej procedury legislacyjnej*, [in:] *Konstytucja, wybory, parlament. Studia ofiarowane Zdzisławowi Jaroszowi*, ed. L. Garlicki, Warszawa 2000, p. 42.

[25] See L. Jamróz, Jamróz, *Status ustrojowy Senatu RP – nierozwiązany problem skrajnie ograniczonych uprawnień ustawodawczych Senatu*, [in:] *Kierunki zmian pozycji ustrojowej…*, p. 110.

[26] Cf. M. Dobrowolski, *W sprawie potrzeby reform dwuizbowości polskiego parlamentu*, "Przegląd Sejmowy" 2009, no. 2, p. 35.

ing process, although its democratic legitimacy is equal to that of the Sejm. In accordance with Article 10 (2) of the 1997 Constitution, both chambers exercise legislative power. Also, Article 104 of the 1997 Constitution does not differentiate the democratic legitimacy of deputies and senators – both are representatives of the Nation under the same rules. This is crucial, given that the legislative process is most closely linked to the principle of sovereignty of the nation and the principle of representation.[27]

In the circumstances of a kind of "Sejm dictatorship" of the coalition having the majority since the 2015 parliamentary elections, manifesting itself, among other things, in a gross restriction of the opposition's participation in the parliamentary decision-making process, the Senate once again seems to be a "Chamber of democratic resistance" to the undemocratic standards pursued in the Sejm. This is a kind of phenomenon, given that, following the free and democratic elections to the Sejm in 1991, it seemed that this function would become history. In view of the progressing erosion of democratic principles of lawmaking at the level of the Sejm legislative process and the disappearance of institutional review of constitutionality of the law, due to the subordination of the Constitutional Tribunal to political power, the Senate today plays the role of both a guardian of the Constitution and a protector of the quality of lawmaking in line with the standards of a democratic state ruled by law. The constitutional crisis affecting the Republic and the prospect of a return to "democratic normal" should encourage to reflection on a possible adjustment of the status of the second chamber in the near future.

In this respect, there can be no doubt that since the Senate is considered in systemic terms as part of legislative power, this statement must be followed by powers in the law-making process, which are not provided for by the Constitution in its current wording. The postulate of a real strengthening of the position of the Senate in the law-making process is not just a strictly theoretical concept. It finds confirmation not only in the proposals consistently put forward by constitutional law scholars, but also in the position of the Constitutional Tribunal, expressed in the already cited judgment of 12 January 2005 (K 24/04). If the Senate may be perceived as a chamber equivalent to the Sejm in so-called European matters, then nothing prevents an analogous status being ascribed to it in legislative proceedings in domestic matters. For since the statute is the work of the parliament as a whole and not just of one of its chambers, the Senate cannot be regarded merely as a Sejm's "assistant" in the process of its enactment.[28] In the period of the current Constitution in force, such a state of affairs has raised concerns in public opinion

[27] Cf. J. Ciapała, *Uwagi w sprawie udziału Senatu w stanowieniu ustaw*, [in:] *Kierunki zmian pozycji ustrojowej…*, p. 98.

[28] For example, see M. Dobrowolski, *O pojęciu „ustawa" w procesie legislacyjnym*, "Przegląd Sejmowy" 2003, no. 2, p. 32.

as to the legitimacy of the functioning of a bicameral parliament in the system of government.[29] Fortunately, in the substantive discussion on recommendable changes to the political system, the demand for the abolition of the Senate has no longer been articulated for some time. This confirms the belief that the current systemic debate should focus on changing the formula of Polish bicameralism towards strengthening the constitutional position of the Senate.

The scope of the advisable modifications of the current system of the Republic of Poland concerning the constitutional shape of the legislative process should include, among other things, a change in the formula of ending the Sejm stage of the proceedings. Due to the fact that the principle of separation of powers and balancing of powers (Article 10 (2) of the 1997 Constitution) does not differentiate the status of the Sejm and the Senate, entrusting both houses of parliament with the exercise of legislative power, there is no axiological justification for the formula according to which a law is adopted at the stage of the third reading of the bill in the Sejm. In accordance with the aforementioned principle of the system of government of the Republic of Poland, it should therefore be assumed that the Sejm adopts a bill, which then goes to the second chamber for further work.

To make the influence of the Senate on the legislative process more realistic, the systemic reflection should also take into account the possibility of differentiating the Sejm majority required to reject the Senate's position, depending on the majority with which the Senate adopted the position on rejecting the bill (respectively: relative, absolute, qualified). Such a solution exists, for example, in the Basic Law of the Federal Republic of Germany (Article 77 (4)) – importantly – not only in relation to the so-called competitive legislation.[30]

Pursuant to Article 2 of the 1997 Constitution, the Republic of Poland is a democratic state ruled by law. The adjective "democratic" emphasises the deliberative model of law-making, in particular with regard to statutes, which are, after all, a fundamental medium shaping relations between the state and the individual. The current parliamentary practice in the Sejm shows that this rule undergoes a deep crisis. It was replaced by primitive perception of the rules of democracy only through the prism of the Sejm arithmetic. As a result, what is and what is not the law is decided solely by the aggregate majority, which claims exclusive right to represent the interests of the sovereign, contrary to the wording of Article 104 (1) of 1997 the Constitution, according to which not only members of the ruling majority, but all the deputies (and senators) are representatives of the nation with the same rights. A way to remedy the deficit of democracy in the legislative process could be to implement, at the constitutional level, mediation between the chambers

[29] As noted by L. Jamróz (*op. cit.*, p. 119).

[30] For more detail in the Polish literature, see B. Banaszak, *System konstytucyjny Niemiec*, Warszawa 2005, p. 81.

if the Senate objects to the text adopted in the Sejm, in order to reach a compromise wording of a law leaving the parliament. Such mechanism is applied not only in federal countries (e.g. the United States), but also in unitary ones (e.g. France).

The implementation of the aforementioned postulates is related to the need to carry out appropriate changes in the content of the Constitution, and therefore requires a cross-party consensus for their implementation, which is certainly not an easy task in view of an extremely polarized political scene. However, the role of the Senate in the legislative process may also be strengthened without making the constitutional changes presented above. This can be done by freeing the Senate from the "corset" of restrictions on amendments submitted by the second chamber to the text of a law adopted in the Sejm. It should be recalled that the restrictions on the matter of Senate amendments do not result explicitly from the text of the Constitution, but are based only on the case law of the Constitutional Tribunal, which cannot be attributed the character of a source of constitutional law. Quite recently, shortcomings and deficits in this regard were revealed in the course of Senate work carried out on 1 June 2022 on the Act amending the Act on the Supreme Court and certain other acts (Senate Paper No. 722), adopted by the Sejm. The Senate majority had no doubt that the fundamental direction of legislative change, determining the mobilization of EU funds as part of the National Recovery Plan, should include the restoration of the way judges are appointed to the National Judicial Council in accordance with the constitutional and European standard of the rule of law. However, the second chamber could not propose the necessary amendments, as they would go beyond the scope of the amendment proposed by the President of the Republic and subsequently adopted by the Sejm. As a result, the only way to restore these standards was to carry out a legislative initiative by the Senate, which amended the Act on the National Council for the Judiciary, which for purely political reasons had no chance of being accepted by the Sejm.

REFERENCES

Literature

Banaszak B., *System konstytucyjny Niemiec*, Warszawa 2005.

Chruściak R., *Parlament w projektach Konstytucji RP, w dyskusji konstytucyjnej oraz w konfrontacji z pozycją parlamentu w nowych konstytucjach państw Europy Środkowej i Wschodniej*, [in:] *Założenia ustrojowe, struktura i funkcjonowanie parlamentu*, ed. A. Gwiżdż, Warszawa 1997.

Ciapała J., *Uwagi w sprawie udziału Senatu w stanowieniu ustaw*, [in:] *Kierunki zmian pozycji ustrojowej i funkcji Senatu RP*, eds. A. Bisztyga, P. Zientarski, Warszawa 2014.

Ciemniewski J., *Dwuizbowość w systemie konstytucyjnym III Rzeczypospolitej*, "Przegląd Sejmowy" 2010, no. 5.

Czeszejko-Sochacki Z., *O niektórych problemach konstytucyjnej procedury legislacyjnej*, [in:] *Konstytucja, wybory, parlament. Studia ofiarowane Zdzisławowi Jaroszowi*, ed. L. Garlicki, Warszawa 2000.

Dobrowolski M., *O pojęciu „ustawa" w procesie legislacyjnym*, "Przegląd Sejmowy" 2003, no. 2.

Dobrowolski M., *W sprawie potrzeby reform dwuizbowości polskiego parlamentu*, "Przegląd Sejmowy" 2009, no. 2.
Garlicki L., *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2021.
Jamróz L., *Status ustrojowy Senatu RP – nierozwiązany problem skrajnie ograniczonych uprawnień ustawodawczych Senatu*, [in:] *Kierunki zmian pozycji ustrojowej i funkcji Senatu RP*, eds. A. Bisztyga, P. Zientarski, Warszawa 2014.
Jaworski W.L., *Konstytucja z dnia 17 marca 1921. Prawo polityczne od 2 października 1919 do 4 lipca 1921*, Kraków 1921.
Kowalski W., *Koncepcje ustrojowe izby wyższej parlamentu w II Rzeczypospolitej*, Warszawa 2014.
Montesquieu C. de, *O duchu praw*, Warszawa 1927.
Orłowski W., *Problem dwuizbowej struktury parlamentu w latach 1989–1997*, [in:] *Polska lat dziewięćdziesiątych. Przemiany państwa i prawa*, eds. T. Bojarski, M. Mozgawa, M. Nazar, vol. 3, Lublin 1997.
Patyra S., *Wszystko już było, czyli dziedzictwo polskiego parlamentaryzmu XX wieku*, "Przegląd Prawa Konstytucyjnego" 2021, no. 4, **DOI: https://doi.org/10.15804/ppk.2021.04.04**.
Rostworowski M., *Ustawodawstwo*, [in:] *Nasza Konstytucja*, Kraków 1922.
Rytel-Warzocha A., Szmyt A., *W kręgu zagadnień Senatu RP*, Gdańsk 2020.
Sarnecki P., *„Parlamentaryzacja" systemów rządowych w Polsce, Finlandii i Chorwacji w świetle ostatnich przekształceń konstytucyjnych w tych krajach*, [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej. Księga jubileuszowa dedykowana prof. Marii Kruk-Jarosz*, eds. J. Wawrzyniak, M. Laskowska, Warszawa 2009.
Skotnicki K., *Konstytucyjne uwarunkowania wyborów do Senatu RP*, [in:] *Kierunki zmian pozycji ustrojowej i funkcji Senatu RP*, eds. A. Bisztyga, P. Zientarski, Warszawa 2014.
Skotnicki K., *Senat III RP – nieprzemyślany czy niepotrzebny?*, [in:] *Dwadzieścia lat transformacji ustrojowej w Polsce*, ed. M. Zubik, Warszawa 2010.
Zientarski P.B., *Organizacja wewnętrzna Senatu. Studium prawno-ustrojowe*, Toruń 2011.

Legal acts

Act of 17 March 1921 – Constitution of the Republic of Poland (Journal of Laws 1921, no. 44, item 267).
Act of 7 April 1989 amending the Constitution of the People's Republic of Poland (Journal of Laws 1989, no. 19, item 101).
Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).
Constitutional Act of 23 April 1935 (Journal of Laws of the Republic of Poland 1935, no. 30, item 227).
Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland and on local self-government (Journal of Laws 1992, no. 84, item 426, as amended).
Resolution of the Senate of the Republic of Poland of 9 November 2007 on the amendment of the Rules of Procedure of the Senate (Official Gazette of the Republic of Poland "Monitor Polski" 2007, no. 86, item 925).

Case law

Judgment of the Constitutional Tribunal of 23 February 1999, K 25/98.
Judgment of the Constitutional Tribunal of 19 June 2002, K 11/02.
Judgment of the Constitutional Tribunal of 24 June 2002, K 14/02.
Judgment of the Constitutional Tribunal of 12 January 2005, K. 24/04.
Ruling of the Constitutional Tribunal of 23 November 1993, K 5/93, OTK 1993, no. 2, item 39.

ABSTRAKT

Artykuł dotyczy problematyki relacji pomiędzy Sejmem i Senatem w procedurze wykonywania przez parlament funkcji ustawodawczej. Autor zwraca uwagę, że obowiązująca Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. bardzo ogranicza wpływ Senatu na proces ustawodawczy, czym nawiązuje do polskiej tradycji ustrojowej. W ten sposób Konstytucja przyjmuje model dwuizbowości skrajnie asymetrycznej, mimo że obie izby parlamentu w polskim ustroju postrzegane są jako organ władzy ustawodawczej. Autor krytycznie ocenia obowiązujące regulacje z punktu widzenia aksjologii ustroju demokratycznego i postuluje wzmocnienie pozycji Senatu w realizowaniu funkcji ustawodawczej.

Słowa kluczowe: dwuizbowość; proces ustawodawczy; system rządów