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The Polish Senate: an unnecessary second chamber

STUDIA I ANALIZY

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Abstract: *2019 marked the 30th anniversary of the restoration of the Senate in Poland. Over time its position and perception in the constitutional system has changed. From the acclaimed symbol of democratic transformation, the Senate has turned into a puzzling second chamber, with no real use. The rationale for its continued existence is becoming more and more questionable. In its current form, the Senate is an example of an unnecessary second chamber.*

Introduction

The Polish Senate (*Senat*) is an example of a second chamber that was abolished after the establishment of single-party rule and restored as a result of democratic transition. What makes the Senate unique though, is that its restoration came almost half a century after it had been abolished. No other second chamber has been reinstated after such a long

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hiatus¹. Usually, countries that at one point decided to abolish their second chambers have never seriously considered bringing them back, or if they did choose to do so, the initial decision was reversed before unicameralism had been able to establish itself for good².

The restoration of the Senate was part of the agreement made between the communist government and the democratic opposition in early 1989 after the so-called Roundtable Talks, that initiated the democratic transition in Poland. The constitutional amendment to that effect was passed by the Sejm on April 7, 1989³. According to the agreement, elections to the new legislative chamber were to be free and fully competitive, unlike to the Sejm, where parties supporting the government were granted a comfortable majority of nearly two-thirds of the seats. Thus, initially the Senate, though a second chamber, had much stronger democratic credentials than its counterpart. Even more so, after the democratic opposition's landslide victory in the first elections to the second chamber. Candidates supported by the opposition won 99 out of 100 senatorial seats.

The so-called 'small constitution' of 1992⁴ not only preserved the bicameral structure of the parliament, but also defined the role of the Senate for the future, in the new constitutional system, then under construction. With regard to the Senate, the new Constitution, adopted in 1997⁵, largely echoed the provisions of its 1992 predecessor. It has been argued, therefore, that, "for the history of Polish bicameralism" the, "small constitution" was far more important than the Constitution of 1997⁶.

The Constitution established two legislative houses, but it gave the Senate a secondary role only. In the asymmetric bicameralism thus created, the second chamber was reduced to an accessory; usually insignificant, useful on occasions, but – truth be told – hardly indispensable.

¹ Only the Romanian Senate comes close. It was abolished in 1947 and was restored after 44 years in 1991.

² See: A. Baturu, R. Elgie, *Bicameralism and Bicameral Reforms in Democracy and Dictatorship. A Comparative Perspective*, «Taiwan Journal of Democracy» 2018, vol. 14, no. 2, pp. 1–29.

³ Ustawa z dnia 7 kwietnia 1989 roku o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej (Dz.U. 1989 Nr 19, poz. 101).

⁴ Ustawa Konstytucyjna z dnia 17 października 1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym (Dz.U. 1992 Nr 84, poz. 426).

⁵ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. 1997 Nr 78, poz. 483).

⁶ W. Orłowski, *Senat Trzeciej Rzeczypospolitej. Geneza instytucji*, Zamość 2000, p. 230.

This article examines the role of the Senate in Polish constitutional system, and argues that given both its constitutional position and its overall performance over more than two decades under current constitutional regime, the Senate is an example of an unnecessary second chamber, and, therefore, that there is a strong case for its abolition. Accordingly, the following subject matters will come under scrutiny: the composition of the Senate and the method employed in its elections; the powers of the chamber and, finally, its constitutional justification.

The composition and the method employed in its elections

The Senate is composed of 100 senators who are elected in direct and popular elections every four year. The term of the Senate corresponds with the term of the Sejm. Members of both chambers are elected on the same day. It does not change even in the case of an early election. According to the Constitution, the decision to hold early parliamentary elections can be made either by the President – but only if certain conditions are met⁷ – or by the Sejm. In the latter case the Sejm needs to pass a resolution by a majority of two-thirds of all the members (art. 98 par. 3). Therefore, with regard to its term of office, the Senate is fully subordinated to the Sejm. Not only is the term of the second chamber not longer, (unlike in many bicameral parliaments) – but it is also dependent on the actions or inactions of the Sejm, that can result in early elections. This particular feature has been considered an especially striking manifestation of the asymmetry in the mutual relations between the two parliamentary chambers⁸.

From the beginning, senators have been elected under the plurality system, originally in multi-member constituencies and since 2011 in single-member constituencies. Elections to the Senate are universal, direct and secret, but not equal, since the number of voters is different in different constituencies⁹. From 1989 to 1997 senators were elected in

⁷ The President is required to call early elections if the Sejm fails to give the newly appointed government a vote of confidence, according to constitutional provisions (art. 154 and 155). He may also choose to do so if, after four months from the day a Budget bill had been presented in the Sejm, the legislation has not been adopted or presented to the President for his consent (art. 225).

⁸ R. Chruściak, *Dwuizbowość parlamentu*, [in:] Z. Jarosz (ed.), *Parlament. Model konstytucyjny a praktyka ustrojowa*, Warszawa 2006, p. 78.

⁹ They are equal only in the sense that every voter has one vote and that the terms of electoral competition cannot favor particular candidate or candidates.

49 voivodeships (*województwo*), two in each of 47 of them and three in two of the most populated. This led to a striking inequality with respect to the ratio of senators to voters¹⁰. From 2001 to 2007, with the number of voivodeships reduced to 16, senators were still elected in multimember constituencies, only the number of seats filled in them varied (from two to four) which helped to significantly reduce the previous inequalities.

The switch from multimember to single-member constituencies in 2011 not only failed to further reduce inequality of the Senate's elections, but actually increased it. Under the Electoral Code¹¹, constituencies in Senate elections should be designed so as to take into account the number of voters. This should be the prime consideration in drawing their boundaries. But constituencies cannot cut across the borders of major local government units (voivodeship and county – *powiat*). More importantly, the new electoral law expressly authorized a disproportion in the number of voters among particular constituencies of up to a ratio of four to one. In practice, in 2011, in 41 out of 100 newly drawn single-member constituencies the population exceeded the national average by more than 15%. In 14 constituencies it was at least twice as high as in the smallest one¹².

To stand as a candidate in Senate elections one needs to be a Polish citizen of at least 30 years of age, and be eligible to vote. Convicted offenders cannot be elected. To register as a candidate, a person needs to secure the support of 2000 voters from his or her constituency, confirmed with their signatures. This doesn't seem to be a particularly demanding requirement and, certainly, it should not discourage anyone seriously interested in running. The candidate who polls more votes than any other candidate is elected. Vacancies, should they occur, are filled through by-elections called by the President.

When it comes to their basic characteristics, there seems to be three major differences between the two legislative houses. First, it is their size. The Senate is a much smaller body than the Sejm with its 460 members. Second, the age at which a person is eligible to run for the second chamber is higher (21 years old are eligible to stand in elections to the

¹⁰ For instance, in 1993 in the least populated constituency there were 89 004 eligible voters for one Senate seat, while in the most populated one, there were 958 414 voters for one Senate seat. K. Składowski, *Zasada równości wyborów a wybory do Senatu w kodeksie wyborczym*, [in:] K. Skotnicki (red.), *Kodeks wyborczy. Wstępna ocena*, Warszawa 2011, p. 284.

¹¹ Ustawa z dnia 5 stycznia 2011 r. Kodeks wyborczy (Dz.U. 2019 poz. 684 oraz 1504).

¹² In 2011 the population of the smallest constituency was 217 595, while in the largest one it was 642 362. See K. Składowski, *Zasada...*, pp. 287–289.

Sejm). Finally, the method of election is different, because members of the first chamber are elected under proportional system.

On the face of it, these factors are not – or, better still, do not necessarily have to be – inconsequential. They can in a certain way affect the behavior of the respective legislative houses. For instance, it is clear that the method of election should be of at least some consequence when it comes to their composition. Different electoral systems should result in reducing the level of congruency between the two chambers' membership. Size should also matter, as a smaller membership is expected to create a closer, more friendly relationship between members, especially when other factors, such as their more advanced age, and the higher re-election rate¹³ are taken into consideration. This in turn should help to reduce hostilities among members, and thus make the chamber more amiable, less partisan, and more prone to distance itself from the regular day-to-day politics.

When it comes to the Senate, however, these expectations, generally speaking, have not been met. Firstly, after 1997 – that is under the current Constitution – only once, in 2019, did the parliamentary election produce opposing majorities in the two legislative houses. For the first time the Senate has become an opposition chamber, even if incredibly weak¹⁴. In contrast, every parliamentary election between 1997 and 2015 resulted in congruent bicameralism (table 1). Only the minority government of the Law and Justice party (Prawo i Sprawiedliwość – PiS) formed in 2005 did not control a majority of seats in the second chamber, although it came very close. What is interesting is that every single ruling party or coalition, proportionally, controlled more seats in the Senate than in the Sejm, with these proportions often being quite significant. Unsurprisingly, the plurality system favored the strongest parties. As the voters tend to cast their votes strictly along party lines to both legislative houses, the difference in electoral methods has not only not diminished the congruency between the two, but actually made it even more robust.

¹³ Studies on the American Congress has shown that this indeed should be the case. See: R.K. Baker, *House and Senate*, New York–London 2001 (1989), especially ch. 3.

¹⁴ The opposition majority formed after the election was extremely fragile. It was composed by senators from three different political parties and by four independent members. Combined, they controlled 51 out of 100 seats.

Table 1. Government support in the Sejm and the Senate 1997–2019¹⁵

Year	Ruling parties ¹⁶	Seats in the Sejm (nos./%)	Seats in the Senate (nos./%)	Difference in pp
1997	AWS/UW	261/56,7	59/59	+2,3
2001	SLD-UP/PSL	258/56,1	79/79	+22,9
2005	PiS	155/33,7	49/49	+15,3
2007	PO/PSL	240/52,2	60/60	+7,8
2011	PO/PSL	235/51,1	65/65	+13,9
2015	PiS	235/51,1	61/61	+9,9
2019	PiS	235/51,1	48/48	-3,1

Source: Calculations based on the official election results published by National Electoral Commission: <https://pkw.gov.pl> (20.12.2019).

None of the other aforementioned factors has made the Senate qualitatively different from the Sejm. It is true that, on average, a senator is older, more mature, often better educated and has more life experience than a deputy. It is also true that senators, rarely, if ever, rank as their parties' officials or their most senior members. Party leaders as well as aspiring politicians always choose a seat in the first chamber. This is one of the reasons why so few senators are appointed to ministerial positions.

In reality, all of this does not seem to matter much. The Senate does not, in general, function on different terms than the Sejm. Most importantly, it is hardly any less partisan than its counterpart. Senators are as loyal to their respective parties as deputies, with the structural deficiencies of the second chamber being only partially to blame. Certainly, longer and independent terms would probably make senators feel more comfortable in their seats and thus make them less dependent on an on-going party support. But it is hard to believe that in the long run it would really make them any less reliant on their parties. That is because most senators do not have and have never had an independent electoral base, and are simply incapable of building one, with the lack of independent financial resources being only one of the reasons. Most importantly they are elected as party politicians, and their voters expect

¹⁵ Number of seats at the beginning of each parliamentary term.

¹⁶ AWS (Akcja Wyborcza Solidarność – Solidarity Electoral Action), UW (Unia Wolności – Freedom Union), SLD (Sojusz Lewicy Demokratycznej – Democratic Left Alliance), PSL (Polskie Stronnictwo Ludowe – Polish People's Party), PiS (Prawo i Sprawiedliwość – Law and Justice), PO (Platforma Obywatelska – Civic Platform).

them to be ‘part of the team’. Generally speaking, party support is what makes or breaks a senator. Incumbency is not much of help¹⁷.

Some expected that the introduction of single-member constituencies would produce a number of strong independent contenders prepared to successfully challenge party candidates. Nothing of that sort has happened, as only 10 independent candidates have been elected to the Senate in the three consecutive elections held in 2011, 2015 and 2019, combined. Moreover, most of them won only because at least one of major parties gave them free pass, by not putting its own candidate on the ballot in their constituencies.

All of this would not be so crucial if the second chamber was able to develop its own unique *modus operandi*. But it has not. No particular sense of comity has emerged in the second chamber over the years. The Senate has not been able to form its own separate identity. For all practical purposes it operates in a similar manner to that of the Sejm.

Powers

In the Polish constitutional system, the Senate is a house of review. Its primary responsibility is to participate, with the Sejm, in making laws, but the law-making powers of both chambers of parliament are not equal, with the role of the Senate being of a secondary nature. First of all, according to the Constitution legislative proceedings must always start in the Sejm, with no exceptions. In every case, therefore, the first chamber initiates legislative proceedings, and it is the first chamber that considers all legislative proposals. It also decides whether to refer it to the Senate, or reject it and thereby end the proceedings altogether. Interestingly, according to the Constitution a bill passed by the Sejm already becomes a statute, even before the second chamber has a chance to scrutinize it (art. 121 par. 1).

¹⁷ The recent misfortune of a long-time, and once very influential senator, one Stanisław Kogut, serves as a good example, even if it provides anecdotal evidence only. Elected to the Senate in 2005 he had been reelected three times – in 2007, 2011 and 2015 – running as a party candidate, but lost his bid for another term in 2019 after he had been stripped of his party’s support and ran as an independent against a challenger backed by his former party. In four consecutive elections between 2005 and 2015 he was able to win 40.5%, 54.1% (in two-member constituency), 66.3% and 66.7% (in single-member constituency) of the votes, respectively. In 2019, when he ran as an independent, his support among voters dwindled to mere 39.7%.

Neither individual senators nor any number of them can propose bills. Only the whole Senate has the right to propose legislation, but it is still up to the Sejm whether and how to act on any of the second chamber's proposals (art. 118 par. 1 of the Constitution). Once a statute is approved by the first chamber, the Senate can accept it without amendments, propose amendments or reject it *in toto*. The amendments agreed to in the second chamber must be germane. Those that go beyond the subject matter of a statute are inadmissible¹⁸, which further constrains the Senate, and reduces its ability to participate in law-making process in a meaningful way.

The Constitution sets a limit of 30 days on the length of Senate's legislative proceedings, and if they are not completed within this time, a statute is considered to be passed without amendments. Should this be the case, a statute is considered to be fully approved by the second chamber¹⁹. Also, the Sejm can overcome the Senate's opposition to a statute, as it only needs to pass it again, by a majority of votes, with at least half of the members present and voting (art. 121 par. 3). Similar majority is required to reject amendments adopted by the second chamber. All this means that the Sejm can rather easily enforce its will against its counterpart, and that the Senate is incapable of influencing legislation in any meaningful way without the acquiescence of the first chamber.

The law-making powers of the Senate are further limited when it comes to the state Budget. In this case, it cannot reject a statute altogether, but can only propose amendments. Moreover, it is obliged to complete its proceedings in 20 days, rather than in 30 days (art. 223 of the Constitution).

In practice, the Senate has only made modest use of its legislative powers; limited as they are. In more than 30 years it has proposed 410 bills, or 13.4 a year. 249 of them were passed by the Sejm (on average, slightly more than eight in a year), 10 were rejected, two were withdrawn, and the first chamber chose not to act on 149 legislative proposals²⁰. Only in exceptional cases did the Senate decide to reject a statute²¹, and instead it usually offers amendments. As of the end of 2019, 43.5% of all statutes referred to the Senate were amended by the

¹⁸ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2016, p. 272.

¹⁹ P. Sarnecki, *Senat RP a Sejm i Zgromadzenie Narodowe*, Warszawa 1999, p. 73.

²⁰ Biuro Analiz, Dokumentacji i Korespondencji Kancelarii Senatu. Informacja: *Liczbowe zestawienie inicjatyw ustawodawczych Senatu w latach 1989–2019* (as of 31st of December, 2019). Source: senat.gov.pl (5.01.2020).

²¹ As of the end of 2019, the Senate rejected only 50 statutes referred by the Sejm.

second chamber, and the total number of amendments introduced in the process exceeded 31 000. Almost four out of every five amendments (79.6%) were accepted by the Sejm²².

These numbers may suggest that the second chamber is an active participant in the legislative process, and that it does shape statutes in a meaningful way. They are, however, misleading and as such they give false impression as to the actual role of the Senate in this regard. Legislative amendments adopted in the second chamber usually do not aim to significantly alter statutes passed by the Sejm. Therefore, they cannot be considered as an attempt to seriously challenge the first chamber. “More often than not they are minor, minuscule really, editorial corrections. Unfortunately, it has become less exceptional to use this stage of legislative process to eliminate all kind of flaws in the statutes, that having been already identified during proceedings in the Sejm, were not eliminated due to hurry and the awareness of the fact that the required alterations can always be made in the Senate”²³. One has to agree that, “due to the method of elections and [party] discipline, the second chamber is the tool in the hands of parliamentary majority, or frankly: the government, that makes use of it to perfect those bills that were not properly scrutinized during earlier stages of the legislative proceedings”²⁴.

Besides participating in making laws, the Senate is responsible for filling various public offices, partly in cooperation with the Sejm, and partly on its own. This so-called ‘elective function’ is one of constitutional innovations made after 1989²⁵. Never before has the second chamber been given such a responsibility²⁶.

In the first capacity, the Senate approves candidates for certain offices selected by the Sejm. The consent of the second chamber is in every case necessary to fill the post, which – at least theoretically – gives it sufficient leverage to influence the appointment, despite the fact that

²² Biuro Analiz, Dokumentacji i Korespondencji Kancelarii Senatu. Informacja: *Liczbowe zestawienie ustaw rozpatrzonych przez Senat w latach 1989–2019* (as of 31st of December, 2019). Source: senat.gov.pl (5.01.2020).

²³ K. Skotnicki, *Senat III RP – nieprzemysłany czy niepotrzebny?* [in:] M. Zubik (ed.), *Dwadzieścia lat transformacji ustrojowej w Polsce*, Warszawa 2010, p. 225.

²⁴ *Ibidem*.

²⁵ W. Sokolnicki, *Funkcja kreacyjna Sejmu i Senatu*, [in:] Z. Jarosz (ed.), *Parlament...*, p. 165.

²⁶ Under the 1921 Constitution, the Senate was involved in the election of the President, but only as a part of the National Assembly (Zgromadzenie Narodowe), composed of members from both legislative chambers.

it cannot name its own candidates²⁷. The Senate approves nominees for the following positions: the President of the Supreme Audit Office (Prezes Najwyższej Izby Kontroli), the Commissioner for Human Rights (Rzecznik Praw Obywatelskich), the Commissioner for Children's Rights (Rzecznik Praw Dziecka), the President of the Office of Data Protection (Prezes Urzędu Ochrony Danych Osobowych), the President of the Institute of National Remembrance (Prezes Instytutu Pamięci Narodowej) and the President of the Office of Electronic Communications (Prezes Urzędu Komunikacji Elektronicznej)²⁸. Independently, the Senate elects, *inter alia*, three members of the Monetary Policy Council (Rada Polityki Pieniężnej) and one member of the National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji).

Just as with law-making, the Senate does not usually take an independent stance, when it comes to fulfilling its elective function, with party discipline being a decisive factor here as well. Taken together, these two major tasks of the second chamber form what one may call the legitimizing function. Given that the Senate neither independently shapes legislation, nor decides on the public appointments, but rather simply grants the wishes of the government of the day, it usually just rubber-stamps government policies.

Only with regard to constitutional amendments and statutes passed under art. 90 of the Constitution that authorizes the President to ratify an international agreement that transfers a portion of sovereign powers to international organizations or their institutions, the Senate is equal to the Sejm. No constitutional amendment or aforementioned statute can be passed without the consent of the second chamber (art. 235 par. 2 and art. 90 par. 1, respectively). In practice, these provisions are of hardly any consequence, as only three constitutional amendments have been passed since the Constitution was adopted, none of them of particular significance or particularly controversial. To date, no statute has been passed under art. 90 of the Constitution.

Of no real importance is also the power of the Senate to decide whether to support President's motion to call a referendum. According to the Constitution, the President, with the consent of the Senate, can

²⁷ The Marshall of the Senate as well as a group of 15 senators can propose a candidate for the Commissioner for Children's Rights (Rzecznik Praw Dziecka). In any case, it is the Sejm who nominates a person for the position and then refers its decision to the Senate for approval.

²⁸ With the exception of the Commissioner for Human Rights, the consent of the Senate is also required for recalling holders of these offices before the end of their respective terms.

trigger a popular vote on virtually any subject matter²⁹. Presidents have not been, however, particularly interested in giving the Senate an opportunity to take a stand as a power broker in this regard. Only two such motions were referred to the Senate. In 2015 the second chamber supported the President's initiative, three years later refused to approve it³⁰.

Justification

Although a number of arguments can be suggested in support of the continued existence of bicameral legislatures, all of them can be reduced to two broad categories: representation and reflection³¹. Two general types of second chambers can be identified then: those that are founded on different principle of representation than the first chamber; and those that are supposed to provide a check on the other legislative house by bringing a different perspective on legislation.

Territorial representation is now the most common in second chambers. Understandably, it is all but universal in federations, but even in non-federal states very often the purpose of a second chamber is to represent regional or local interests³². Alternatively, ethnic, religious or linguistic minorities may find representation in a second chamber. It may also serve to represent vocational interests or the elites³³. A 'house of review' type of second chamber can be found in those countries where

²⁹ The Senate approves President's motion by a majority of votes, with at least half of senators present and voting (art. 125 par. 3).

³⁰ In the first case, the Senate acted as a political ally of the then President, who after losing first round of the election, tried to rally support ahead of the second round by pushing a referendum on the change in electoral law (switch to single-member constituencies in the Sejm elections), political parties finances and modification of tax law. It didn't work, but referendum did take place. However, only 7.8% of the eligible voters turned out to vote. In 2018, the Senate, again, although in a different way, acted as an ally of the President. This time it saved him an embarrassment of the ill-conceived consultative referendum on the change of the Constitution.

³¹ J. Coakley, *The Strange Revival of Bicameralism*, «The Journal of Legislative Studies» 2014, vol. 20, no. 4, p. 546. These two, general justification of bicameralism should not be considered mutually exclusive. There is no reason why a second chamber that represents different interests cannot at the same time provide a check on the first chamber and contribute to legislative process. In fact, a number of second chambers do in fact both.

³² M. Rusell, *What are second chambers for?*, «Parliamentary Affairs» 2001, vol. 54, no. 3, p. 444.

³³ Once prevalent aristocratic houses have become almost completely obsolete. See: P. Pasaglia, *Unicameralism, Bicameralism, Multicameralism: Evolution and Trends in Europe*, «Perspectives of Federalism» 2018, vol. 10, no. 2, pp. 10–13.

there is no clear need for a separate representation of different interests in parliament.

Since Poland is one of those countries, the justification of the Senate can only come from the role of the second chamber as an effective house of review. This is because Poland is a unitary country with no true regional identities, at least not strong enough to legitimize a second chamber representing regions. It is also homogenous, ethnically, linguistically and religiously. There are no identifiable interests that are significant enough to deserve separate representation in the second chamber.

It is therefore not surprising then, that apart from the conception of a chamber of local government that resurfaces time and again in a public debate on the future of the Senate, bicameralism has never been seriously discussed in Poland in terms of representation. The restoration of the second chamber of parliament in 1989 was not the result of any comprehensive constitutional debate. Rather, it was a hasty measure, necessary to achieve a compromise between the government and the democratic opposition. Such a debate, took place when the new Constitution was being drafted. During the deliberations the idea of a second chamber as a representation of particular interests – however defined – did not get, however, any serious traction. Instead, the prevailing opinion was that the proper role of the Senate should be to improve legislation, that the second chamber should be less partisan than the Sejm, and that its legitimacy should stem from the, “individual authority of its members”³⁴.

Such expectations turned out to be overly optimistic. As was already mentioned, the structural deficiencies of the Senate are only partially to blame for its general failure as an effective legislative house. Of at least equal, if not of greater significance, is the very nature of political parties and the party system, partisanship and political animosity, and finally the deficits of the political elites, both intellectual and characterological. The experience of second chambers in other countries show that structural shortages can be overcome. For example, the French Senate has successfully established its own unique *modus operandi*, and, “it appears as an assembly where, contrary to trend of the French political system, the divide between majority and opposition is remarkably mitigated”³⁵.

³⁴ R. Chruściak, *Sejm i Senat w Konstytucji RP z 1997 r. Powstawanie przepisów*, Warszawa 2002, p. 14.

³⁵ J. Grangé, *Attitudes et Vicissitudes du Sénat (1958–1980)*, «Revue française de science politique» 1981, vol. 1, p. 59, quoted in: P. Jensef Monge, *The Sénat Français of the Fifth Republic: The Permanent Paradox*, [in:] R. Albert, A. Baraggia, C. Fassone (eds.), *Constitutional Reform of National Legislatures. Bicameralism under Pressure*, Cheltenham–Northampton 2019, p. 209.

There are therefore a number of reasons why the Senate has failed to establish itself as a legislative house significantly different from the Sejm. Since its justification in the constitutional system relies on the ability to act as a, 'chamber of sober second thought', no wonder that its continued existence is more and more often questioned.

Conclusion: a case for abolishing the Senate?

The ultimate confirmation that the Senate would be a permanent part of the national legislature in the first democratic Constitution was not a foregone conclusion. In fact, among many issues discussed during the making of the constitution, "the question of bicameralism was one of the most controversial"³⁶. Although only two of the seven drafts of the proposed constitution that were presented to the National Assembly at the beginning of its deliberations envisaged unicameral parliament, they both were sponsored by three parties that taken together had enough votes to push their ideas through. The constitutional committee of the National Assembly voted twice on the question whether the future parliament should be composed of two legislative houses or just one. The first vote was inconclusive, but in the second vote bicameralism won support of 23 members of the committee against 20 members who opposed the proposal. A motion to disregard committee's recommendation and eliminate the Senate from constitutional text, was then moved in the National Assembly, and won the support of a majority (228 votes against 223). This was, however, less than the required two-thirds of the votes³⁷.

In the years that have passed since the adoption of the Constitution, no attempt has been made to reform the Senate, let alone to abolish it altogether. The latter was promised by the Civic Platform (Platforma Obywatelska – PO), then the major opposition party, in two consecutive party programs published ahead of parliamentary elections in 2005 and in 2007. However, once in power, PO chose not to act on its promise,

³⁶ Z. Jarosz, *Problem dwuizbowości parlamentu w przyszłej Konstytucji RP*, «Przegląd Sejmowy» 1995, no 1 (9), p. 15.

³⁷ K. Skotnicki, *Senat III RP...*, pp. 216–217. One of the reasons, though, was the overrepresentation of the Left in the National Assembly, a result of the 1993 parliamentary elections that returned the least representative parliament in modern Polish history. Generally, support for bicameralism was much stronger, but most of the parties that were for preserving the Senate in the new constitution, were not represented in the National Assembly.

even when after the 2011 election there seemed to be the required majority in parliament ready to support the necessary constitutional amendment. After 2011 the idea was picked up by the Left.

In academia, reform of the Senate has been always more favored than its simple abolition. Thus, the academic debate, which started only few years after the Constitution was adopted, but has intensified in recent years³⁸, has therefore concentrated on the second chamber's shortcomings and the possible remedies.

There seems to be general agreement that reform of the second chamber should address at least three major issues: the Senate's term; the method of election, and its overall relationship with the Sejm. Accordingly, it has been argued that the term of the Senate should be independent from that of the Sejm's, so that in future the elections to both chambers would be held separately; the method of elections should be modified to effectively eliminate congruency between two legislative houses, and finally that the law-making powers of the Senate should be strengthened, not so much as to make the second chamber equal with the first, but enough to establish real partnership between the two of them³⁹.

Most of those who see the need for the reform of the Senate would like to keep it as a chamber of political representation, only with different kind of membership from the Sejm. Their intention is to turn the Senate into an effective 'counter-majoritarian' device. It seems, however, that they fail to fully appreciate the complexity of the problem. What they do not consider is that addressing the structural deficiencies of the Senate through constitutional amendments and other legal measures can only do so much. There is no guarantee that independent terms of the Senate will altogether eliminate congruency between the two legislative houses, though indeed, there is a good chance for that. The question

³⁸ It was triggered by two seminal articles penned by W. Sokolewicz and M. Granat with M. Dobrowolski, and published in 2001 and 2002, respectively. See: W. Sokolewicz, *O potrzebie reformy Senatu*, «Państwo i Prawo» 2001, nr 11; M. Dobrowolski, M. Granat, *Jaka reforma Senatu?* «Państwo i Prawo» 2002, nr 5. For the most recent review of the debate on the future of the Senate in English see: K. Granat, *The future of Poland's second chamber: Is the Senate still needed?* [in:] R. Albert, A. Baraggia, C. Fassone (eds.), *Constitutional Reform...*, p. 212–229.

³⁹ See i.e. B. Opaliński, *Uwagi o potrzebie modyfikacji drugiej izby parlamentu we współczesnym polskim systemie ustrojowym*, «Przegląd Prawa Konstytucyjnego» 2012, no. 1, pp. 82–83; M. Dobrowolski, *W sprawie potrzeby reformy dwuizbowości polskiego parlamentu*, «Przegląd Sejmowy» 2009, No 2 (91), p. 46; K. Granat, *The future of Poland's second chamber: Is the Senate still needed?* [in:] R. Albert, A. Baraggia, C. Fassone (eds.), *Constitutional Reform...*, pp. 219–226; K. Skotnicki, *Senat III RP...*, p. 227.

remains, however, whether – in the long run – it will be more of a blessing than a curse. If the goal of the reform is to improve the quality of legislative process by turning the Senate into genuine chamber of ‘sober second thought’ – both strong and independent enough to challenge the Sejm – then it seems it will inevitably fail. This is because no reform can remedy the Senate’s principal flaws, which are partisanship and political hostilities. Nothing in the current state of politics in Poland – nor in its recent political history – suggests that a reformed second chamber would be any more independent-minded and detached from regular partisan politics than it is now. And if the first few months of the opposition-controlled Senate can be any indication, it seems that incongruent and more symmetrical bicameralism would rather result in obstruction, permanent inter-parliamentary conflict and repetitive legislative deadlocks than in increased quality of legislation.

Poland is one of those countries where there is no unquestionable need for a bicameral legislature, since there is no need for a separate representation of particular interests in parliament. The record of the Senate does not justify its continuing existence as a house of review, since it has proven to be chronically unable to act in the manner expected from a ‘chamber of sober second thought’. The value of ‘reflection’ as a rationale for bicameralism can be seriously questioned anyway. After all, there is nothing that is required from legislature in constitutional democracy that cannot be delivered by a single chamber. If there are no obvious reasons for separate representation of particular interests in parliament than one can doubt whether there is really a need for two legislative houses after all. Neither tradition, however long, nor the sheer size of territory or population are good enough rationales.

Reform of the Senate, even if feasible, will not be able to address its core deficits. For this reason, there is a strong case to be made for the abolishment of the Senate. In late 1990’s D.M. Olson described the Senate as, “an institution in search of a mission”, and noted that its, “rationale in a legislative process in a stable democracy has been, and remains, open to question”⁴⁰. After more than two decades since these words were written, the Senate still haven’t found its mission. It seems that the time has come for the search to end.

⁴⁰ D.M. Olson, *From Electoral Symbol to Legislative Puzzle: The Polish Senat* [in:] S.C. Patterson, A. Mughan (eds.), *Senates. Bicameralism in the Contemporary World*, Columbus 1999, pp. 327–328.

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