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Evolution of the Senate institutions based on the Constitutional Act of March 17th 1921 and the Constitutional Act of April 23rd 1935

Keywords: Senate, constitution, electoral law, president, Senate organs

Słowa kluczowe: Senat, konstytucja, prawo wyborcze, prezydent, organy Senatu

Abstract

In the article, the authors compare the institutions of the Senate of the Second Polish Republic on the basis of the Constitutional Act of March 17, 1921 and the Constitutional Act of April 23, 1935. In the first part, the article presents the way of functioning and selecting the senators in accordance with the provisions of the Constitutional Act of March 17, 1921. The second part of the article is a description of the regulations contained in the constitutional Act of 23 April 1935, on the basis of which then Senate of the Republic of Poland functioned. At the end of this article, the authors indicate similarities, but above all differences, in the functioning of the first chamber of the parliament of the Second Polish Republic.

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Streszczenie**Ewolucja instytucji Senatu na podstawie Ustawy konstytucyjnej z 17 marca 1921 roku oraz Ustawy konstytucyjnej z 23 kwietnia 1935 roku**

W artykule autorzy dokonują porównania instytucji Senatu II Rzeczypospolitej Polskiej na podstawie Ustawy konstytucyjnej z 17 marca 1921 r. oraz Ustawy konstytucyjnej z 23 kwietnia 1935 r. W pierwszej części artykułu przedstawia sposób funkcjonowania oraz tryb wyboru senatorów zgodnie z przepisami Ustawy konstytucyjnej z 17 marca 1921 r. Natomiast w drugiej części artykułu znajduje się opis regulacji zawartych w Ustawie konstytucyjnej z 23 kwietnia 1935 r., na podstawie których funkcjonował ówczesny Senat RP. W zakończeniu niniejszego artykułu autorzy wskazują podobieństwa, ale przede wszystkim różnice w funkcjonowaniu pierwszych Izb Parlamentu II Rzeczypospolitej Polskiej.

I. Preface

The purpose of this article is to present the evolution of Senate institutions in the years 1921–1935. After Poland regained its independence, the Constitutional Act of March 17th, 1921, was the first constitution after the partitions of Poland. Of course, it is necessary to remember the Small Constitution Act of February 20th, 1919, but the “March Constitution” was the first basic law that allowed for the full construction of parliamentarism of the Second Republic of Poland. In this article, the authors will attempt to compare the institution of the Senate, taking into account two legal acts, i.e.: The Constitutional Act of March 17th, 1921—the “March Constitution” with the Constitutional Act of April 23rd 1935 – the “April Constitution”. The main purpose of this analysis is to indicate similarities as well as differences in the functioning and competences of the Senate as well as the procedure for the election of senators of the Second Republic of Poland.

II. The Senate in the Constitutional Act of March 17th, 1921

Constitutional Act of March 17, 1921³ in its content indicates a constitutional model that developed in Western European countries during the eighteenth and nineteenth centuries. Referring to the political system, the March Constitution was modeled on a democratic and parliamentary model, assimilating a large number of political institutions included in the constitutional laws of France. The most important prime principles contained in this Constitution included principles such as: tripartite power⁴, the republican form of government, the supremacy of the nation, declaration of citizens' rights and freedoms, institutional guarantees of the rule of law, parliamentary-cabinet system, broad self-government of the society, independence of judges, five-party electoral law and the principle bicameral parliament⁵.

Pursuant to Art. 2 of the Constitutional Act of March 17th, 1921 "the bodies of the nation in terms of legislation are the Sejm and the Senate". The above statement means that the constitution introduced the bicameral rule⁶. It is worth emphasizing that the chambers in the parliament, i.e. the Sejm and the Senate, were holding an equal position. In addition, each of the chambers performed state functions to the same extent. Nevertheless, it should be noted that it is clear from the detailed provisions that it was not the Senate but the Sejm that led the primacy. The dominance of the Sejm was most visible in the scope of powers regarding the creation and control of the government, as well as in matters concerning legislation. However, as the practice of applying the Constitution has clearly shown, the tendencies of strengthening the position of the chamber of the second parliament – the Senate – predominantly prevailed⁷.

In accordance with the provisions of the "March Constitution", the Senate's construction was based on an equally democratic basis as the construc-

³ Constitutional Act of March 17, 1921 (Dz.U. No. 44, item 267).

⁴ M. Dyjakowska, *Realizacja Zasady Trójpodziału Władzy w Konstytucji Marcowej*, "Teka Komisji Prawniczej" 2013, vol. VI, p. 27.

⁵ A. Burda, *Konstytucja marcowa*, Lublin 1983, pp. 31–32.

⁶ M. Dobrowolski, *Zasada dwuizbowości w polskim prawie konstytucyjnym*, Warsaw 2003, p. 68.

⁷ A. Burda, op.cit., s. 45.

tion of the Sejm⁸. Senators were elected by individual voivodships in general, direct, secret, relative and equal elections⁹. In the electoral law of the Senate of July 28t, 1922, it was regulated that the Senate consisted of 111 senators, 93 of whom were elected from regional lists in voivodships and 18 from the national list¹⁰. In the Senate elections, every province was an electoral district. The right to vote was granted to a citizen who was 30 years of age on the day of voting, while a passive electoral right was possible for every citizen who had an active electoral right and was 40 years old¹¹. Therefore, electoral rights to the second chamber of the parliament were held by slightly older citizens. According to the right, the above-mentioned procedure was intended to provide an adequate guarantee that the second chamber of the parliament will be a representative of voters with strong, conservative views. At this point it is worth emphasizing that the practice clearly showed, that the above assumption turned out to be right¹². The Constitution also defined the period of the Senate's term of office, which was 5 years, but it lacked a provision that would indicate from which moment it should start its course¹³.

Based on Art. 6 of the Rules of Procedure of the Senate of March 24th, 1923, the first session of the Senate was opened by the President of the Republic of Poland, who elected a chairman from among the three oldest senators¹⁴. The Speaker of the Senate was elected by secret ballot, by an absolute majority of votes. Then the deputy speakers and secretaries of the senate were elected¹⁵.

It should be noted that the "March Constitution" greatly depleted the catalog of Senate competences in the field of legislation, which was consequently reduced to the role of the so-called "brake"¹⁶. This was mainly due to the

⁸ W. Komarnicki, *Ustrój państwowy Polski współczesnej. Geneza i system*, Kraków 2006, p. 46.

⁹ W. Komarnicki, *Polskie prawo polityczne. Geneza i system*, Warsaw 1992, p. 419.

¹⁰ Art. 4 of the Act of July 28, 1922, Electoral Ordinance to the Senate (Dz.U. No. 66, item 591).

¹¹ M. Dobrowolski, op.cit., p. 69.

¹² A. Ajnenkiel, *Konstytucje polskie 1791–1997*, Warsaw 2001, p. 178.

¹³ J. Pietrzak, *Senat Rzeczypospolitej Polskiej Tradycja i Współczesność XV–XXI w.*, Warsaw 2010, p. 164.

¹⁴ Art. 6 of the Rules of Procedure of the Senate from March 24, 1923, https://bs.sejm.gov.pl/F?func=full-set-set&set_number=001232&set_entry=000001&format=999 (17.11.2018).

¹⁵ Art. 10 of the Rules of Procedure of the Senate from March 24, 1923.

¹⁶ W. Komarnicki, *Polskie prawo...*, p. 431.

fact that the veto, lying in the competence of the Senate, could be annulled by means of a special resolution adopted by a qualified majority. The changes also concerned the composition of the Senate, and the most important one was the fact that the censors were finally removed from it. In addition, the provisions of the “March Constitution” stipulated that senators were elected in the five-quota election, while their number was defined as one-fourth of the composition of the Sejm¹⁷.

III. The Senate in the Constitutional Act of April 23rd 1935.

The Constitutional Act of April 23rd 1935¹⁸ was divided into 14 chapters, which consisted of 81 articles. In contrast to the creators of the “March Constitution”, the creators of the “April Constitution” departed from the concept of identifying the nation with the subject exercising the political authority in the state. Instead, a solidarity-based formula was introduced, according to which, pursuant to Art. 1 “The Polish state is the common good of all citizens¹⁹.”

In contrast to the Constitutional Act of March 17th 1921, which as the basic principle adopted the principle of the division of powers, the Constitutional Act of April 23rd 1935, it did not recognize it both in a political sense and in the division of competences. Under the provisions of the “April Constitution”, the legislator considers the basic principle of concentration of power exercised by the President of the Republic of Poland. The exercise of this right manifested itself not only in the field of lawmaking, but also in the exercise of the law²⁰.

The “April Constitution” in Art. 3 (1) precisely defined the catalog of organs, which were under the authority of the President of the Republic of Poland. These were: Government, Sejm, Senate, Armed Forces, Courts and State Audit²¹. One should agree with the opinion of W. Komarnicki, who rightly observes that the layout of the content contained in the “April Constitution”

¹⁷ A. Ajnenkiel, *op.cit.*, p. 178.

¹⁸ Constitutional Act of 23 April 1935 (Dz.U. No. 30, item 227).

¹⁹ Art. 1 of Constitutional Act of 23 April 1935.

²⁰ W. Komarnicki, *Ustrój państwowy...*, p. 175.

²¹ Constitutional Act of 23 April 1935.

reflects the basic political position of the creators who are guiding it. This is evidenced by the combination of the subjective division with the subject division, the order of departments, or finally the lack of a separate department that would refer to civil rights. In contrast to the “March Constitution”, the “April Constitution” is not preceded by a preliminary declaration containing basic ideological premises. The creators of the April Constitution did not put its general principles in the introduction. They decided that these principles would not only be found in Chapter I of the “Republic of Poland” but also beyond it²².

The adoption of the “April Constitution” resulted in a change in the choice of Senators. On its basis, the President of the Republic of Poland elected 1/3 of senators, while in the general elections 2/3 of the composition of the Senate was elected²³. In accordance with the provisions of the Electoral Code of July 8th, 1935, the President of the Republic of Poland, elected 32 senators, and 64 senators were elected in a general ballot. The number of senators also changed, because it was reduced to 96. The “April Constitution” also introduced changes concerning passive and active electoral law. The active electoral law was dependent on education, position held or merits such as: awarding the Order of the White Eagle, Virtuti Militari, Cross or Medal of Independence, Cross of Valor, Order of the Rebirth of Poland, Cross of Merit²⁴. A passive electoral right, as in the case of the “March Constitution”, was vested in a citizen who was 40 years of age on the day of the election and had an active electoral right²⁵. The “April Constitution” maintained the 5-year term of office of the Senate and made it clear that it began on the day of the first sitting of the Sejm.

In the Provisional Rules of the Senate adopted on October 5th, 1935, the President of the Republic of Poland was entrusted with the free election of a senator who presided over the sessions to elect the Speaker of the Senate.

²² W. Komarnicki, *Ustrój państwowy...*, pp. 175–179.

²³ M. Granat, *Prawo konstytucyjne w pytaniach i odpowiedziach*, Warsaw 2014, p. 200.

²⁴ Art. 2, 3 of the Act of July 8, 1935, Election Law to the Senate (Dz.U. No. 47, item 320); J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warsaw 1994, p. 505.

²⁵ J. Pietrzak, *Senat Rzeczypospolitej Polskiej Tradycja i Współczesność XV–XXI w.*, Warsaw 2010, p. 164.

Among the bodies of the Senate were Deputy Marshals, Secretaries, Commissions and the Marshal's Court²⁶.

IV. Final applications

After Poland regained its independence in 1918, it was the constitutional law of March 21st, 1917, that introduced the principle of bicameral parliament. Thanks to the "March Constitution" it was possible to conduct in 1922. Senate elections²⁷. It should be emphasized that the Senate's competences were significantly limited²⁸. This is evidenced primarily by the fact that the Senate did not have the right of legislative initiative. At that time, only the Sejm and the government had the right. Another proof that the Senate had very limited competences was the fact that he did not have any control powers over the government, but it should be noted that senators had the right to report the interpellation²⁹.

The Constitutional Act of April 23rd, 1935. clearly strengthened the position of the Senate in relation to the Sejm³⁰. Pursuant to its provisions, it was the Speaker of the Senate (not as previously in the Constitution of March 21st, 1921, Marshal of the Sejm) who was to act as president in the event of his death or inability to perform his duties. Another important entitlement in the competence of the Speaker of the Senate was the chairman of the Electoral Assembly and the convening of joint chambers³¹.

The constitutions under analysis also differed in terms of the procedure for changing them. The first of them – the Constitution of March, provided for its amendment by means of an act adopted by a majority of two-thirds

²⁶ Art. 2, 8, of the Provisional Rules of the Senate of October 5, 1935, https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/64RVXPLTBA648F18MHJTGXCVTSMMLSP.pdf (17.11.2018).

²⁷ Home of the Senate of the Republic of Poland, Notes on the Senate, https://www.senat.gov.pl/gfx/senat/userfiles/_public/senatrp/noty2016/18.pdf (17.11.2018).

²⁸ S. Bożyk, *Senat Rzeczypospolitej Polskiej*, [In:] *Izby drugie parlamentu*, ed. E. Zwierchowski, Białystok 1996, p. 35.

²⁹ Home of the Senate of the Republic of Poland, Notes on the Senate.

³⁰ S. Bożyk, *op.cit.*, p. 36.

³¹ Home of the Senate of the Republic of Poland, Notes on the Senate.

of the Sejm and the Senate, in the presence of half of the statutory number of parliamentarians. On the other hand, the “April Constitution” in its provisions explicitly indicated that only the president, the government and 1/4 deputies have the right to submit an application to change the constitution³².

Both in the Constitutional Act of March 17th, 1921 and in the Constitutional Act of April 23rd, 1935, similarities can be found, but above all, a number of differences regarding the parliamentary system of the Second Republic of Poland. Although each of them understood the system of governance in a different way, both legal acts placed the Polish Republic as the highest good on the first place.

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³² J. Pietrzak, op.cit., p. 175.