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Council of State – Emanation of the Sejm

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Abstract

Due to the Constitution of 1952, the Council of State gained the status of the supreme organ of state power which was to strengthen the control of the Sejm over the government between the sessions. It operated on a collegial basis and its composition reflected the political face of the Sejm. The Council of State has received a wide range of competences, including very significant power to issue decrees with the force of law, which meant that in certain periods it became the main legislator limiting the legislative activity of the Sejm. Thanks to decree-making activities, it had a huge impact on the shaping and functioning of legal system. In practice, it also took over control rights over the government. Due to the real nature of this body in the system of state organs, it can be stated that the political purpose for which the Council of State was established has been significantly expanded.

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Streszczenie**Rada Państwa – emanacja Sejmu**

Rada Państwa uzyskała na gruncie Konstytucji z 1952 r. status naczelnego organu władzy państwowej, który miał wzmacniać kontrolę Sejmu nad rządem pomiędzy sesjami. Działała na zasadzie kolegiałności a jej skład odzwierciedlał polityczne oblicze Sejmu. Rada Państwa otrzymała szeroki zakres kompetencji, w tym bardzo istotne uprawnienie do wydawania dekretów z mocą ustawy, co spowodowało że w pewnych okresach stawała się głównym prawodawcą ograniczając działalność ustawodawczą Sejmu. Dzięki działalności dekretodawczej miała ogromny wpływ na kształtowanie i funkcjonowanie systemu prawa. W praktyce przejęła ponadto uprawnienia kontrolne w stosunku do rządu. Z uwagi na rzeczywisty charakter tego organu w systemie organów państwowych można stwierdzić, że cel ustrojowy dla którego Rada Państwa została powołana został znacznie rozszerzony.

The Council of State was the second apart from the Sejm body of the state apparatus specified in the Constitution of the Polish People's Republic as the supreme body of state power which in terms of composition and rules of appointment constituted a kind of emanation of the Parliament².

The solutions adopted in the USSR Constitution of 1936 had an impact on regulating the political role and place of the State Council in the system of state organs in 1952 (except that the Council of State – unlike the Soviet solutions – had the character of an extrajudicial state body, and the functions of managing the work of the Parliament were entrusted to the Presidium of the Sejm) and the experience in shaping the political system in 1944–1952, which emphasized the usefulness of the collegiate body at central level, occupying a leading position among other supreme organs of the state, equipped with its own broad competence. This body during both the National Council and the Legislative Sejm acted under the leadership of a one-man head of state. The creators of the Constitution of the Polish People's Republic used only some of

² J. Stembrowicz, *Rada Państwa w systemie organów PRL*, Warsaw 1968, p. 7, 16.

the existing solutions. A collegiate body closely related to the Sejm was maintained, but the one-man body performing traditional functions of the head of state was abandoned. In principle, the Council of State became the successor of the president's rights in the Constitution of the Polish People's Republic, and to some extent also the Council of Ministers³.

The Constitution of the Polish People's Republic in Article 30 section 2 stated that 'The Council of State shall be subject to the Sejm in all its activities'⁴. The basic assumption of the system was the independence of the Council of State from the government, and at the same time full dependence on the Sejm of the PRL. This relationship in the political sphere resulted from the fact that the Council of State was elected by the Sejm from a group of deputies and the possibility of making changes to its composition each time. Linking and subordinating the Council of State to the Sejm were justified as a political goal, for which it was established – namely supplementing the activities of the Sejm which because of the session work mode had limited possibilities of direct management and control functions.

In practice, however, this relationship was not implemented but was of a formal nature. The Constitution did not provide for legal measures to secure it⁵.

The concept of a collegiate body usually elected from the Parliament and equipped with various competences, primarily in the power to replace the Parliament and in powers over supreme authorities and representative local authorities, and fully subordinate to the Parliament was appropriate not only for the current political system of People's Poland, but also for the other socialist countries and in particular for the Soviet Union. The source of the concept of the Council of State and related bodies having different names in other socialist countries (e.g. the Council of State in East Germany and Romania, Presidium of the People's Assembly in Bulgaria, The Presidium of the Hungarian People's Republic, the Presidium Council in Hungary) became the institution of the Presidium of the Supreme Council of the USSR. It should be

³ W. Skrzydło, *Rada Państwa PRL (Uwagi de lege ferenda)*, "Państwo i Prawo" 1983, No. 3, p. 13.

⁴ Dz.U. 1976, No. 7, item 36.

⁵ W. Zakrzewski, *Sejm Polskiej Rzeczypospolitej Ludowej jako najwyższy przedstawicielski organ władzy państwowej*, [in:] *Sejm Polskiej Rzeczypospolitej Ludowej*, ed. A. Burda, Warsaw 1975, p. 114.

noted that the State Council also had a native kinship with The Presidium of the National Council ensuring continuity of the temporary parliament's functioning (the National Council) in the period between sessions, and to a lesser extent with the Council of State existing under the constitutional law of February 19, 1947. Namely, the Council of State resembled the body operating on the basis of the Small Constitution of 1947, but it differed in case of its place in the system of state organs, composition and scope of competence, which was constantly expanding. The Council of State not only took over the competences of its predecessor, but also many powers of the office of the President of the Republic of Poland abolished in 1952⁶.

The title of the third chapter of the Constitution of the Polish People's Republic indicated that the Council of State, not being a representative body (meaning elected by the people), was qualified as the supreme body of state authority, thus completing the constitutional list of authorities. From the nature of the Council of State as a body performing certain supplementary functions in relation to the scope of activity of the Sejm and its performance as a collective head of state, broad and serious powers resulted from it, which can be included in the following groups:

- granted to it as the supreme body of state power,
- related to the Sejm's activities,
- performed as head of state,
- other administrative powers⁷.

As the supreme body of state authority, the Council of State had the following powers: the right of legislative initiative, adopting a universal interpretation of laws, appointing and dismissing members of the Council of Ministers at the request of the Prime Minister (between sessions of the Sejm), the Prosecutor General and judges of the Supreme Court and exercising supreme powers over these bodies, as well as exercising supervision over local representative bodies at all levels – national councils⁸. Equipping the State Council with the power to supervise national councils separated them from the Sejm and was a departure from the principle of uniformity of power.

⁶ W. Skrzydło, *Prawo konstytucyjne*, Lublin 1996, p. 96.

⁷ Ibidem, p. 97.

⁸ F. Siemieński, *Prawo konstytucyjne*, Poznań 1976, p. 275.

The competences of the Council of State exercised as the supreme authority also included ensuring that the law complies with the constitution, granted by the constitutional amendment of February 10, 1976 (Article 30 (1) (3) of the Constitution). In this case, however, it is necessary to specify how, to what extent and under what conditions the authority could exercise its competence. The laconic nature of this provision of the constitution, therefore, allowed the use of a virtually unlimited set of measures which main task was to ensure compliance of the law with the constitution⁹. For six years of its validity, however, the State Council never exercised this right. This entitlement was formally eliminated by the constitutional amendment of July 20, 1983¹⁰, in connection with the appointment of the Constitutional Tribunal¹¹.

The most important right of the Council of State as the supreme body of state authority in the field of lawmaking was issuing decrees with the force of law. By issuing decrees, the State Council had a great impact on the shaping and functioning of the legal system. As emphasized in the literature, the systemic practice showed that the improper use of these powers by the Council of State led to the shifting of the limits of competences of the supreme organs of the state which was against the constitution¹².

The State Council was also authorized to take over certain competences of the Sejm in the period between its sessions. Such competences of the Council of State included: appointing the Marshal-Senior, agreeing to hold deputies under criminal and criminal liability between sessions of the Sejm and convening the Sejm for ordinary sessions on specific dates specified by it. The solutions adopted in the Constitution of the Polish People's Republic did not guarantee the Sejm independence in terms of its parliamentary work, or the Sejm's supremacy over other organs. Such powers of the Council of State were competitive to the powers of the Sejm. For example, the appointment of two supreme state organs – the Supreme Court and the Prosecutor General – was the sole competence of

⁹ Z. Witkowski, *Rada Państwa jako organ czuwający nad zgodnością prawa z Konstytucją*, "Państwo i Prawo" 1977, No. 7, p. 40.

¹⁰ Dz.U. 1983, No. 39, item 175.

¹¹ Z. Witkowski, *Przemiany w zakresie kompetencji i działań Rady Państwa oraz jej przewodniczącego*, [in:] *Nowe uregulowania w polskim prawie konstytucyjnym (1980–1987)*, eds. J. Galster, E. Mizerski, Z. Witkowski, Toruń 1989, p. 79.

¹² Compare: J. Repel, *Naczelne organy władzy państwowej de lege lata i de lege fundamentalis ferenda*, "Acta Universitatis Wratislaviensis" 1983, Law CXVI, p. 172.

the Council of State, not the Sejm, although the logic of the uniformity of power flowing from the Sejm dictated the opposite solution¹³.

The powers of the State Council as the head of state include, first of all: the appointment and dismissal of plenipotentiary representatives of the People's Republic of Poland in other states, acceptance of letters of credence and dismissal of diplomatic representatives of other states accredited to the Council of State, ratification and termination of international agreements, adoption of decisions on the state of war, applying the law of grace, awarding orders, decorations and honorary titles, granting and withdrawing citizenship of the People's Republic of Poland, and introducing martial law and announcing partial or universal mobilization¹⁴.

Administrative competences included: filling certain civil and military positions, managing elections to the Sejm and national councils, dividing the country into constituencies and allocating seats, appointing the National Electoral Commission.

The analysis of the competence of the Council of State indicates that it was not only a legislative or executive body, but fulfilled the function of supreme state management. Hence its name – the supreme body of state authority, not the supreme legislative or executive body¹⁵. The Council of State was elected by the Sejm from a group of deputies and in principle for its term of office. According with the Article 29 of the Constitution, the Council of State was to operate until the election of a new Council by a newly elected parliament¹⁶.

Regulations of the Sejm of the PRL in Article 47 section 1 resolved that the Sejm elected the Council at the first meeting of the first session by an absolute majority of votes in the presence of at least half of the total number of deputies¹⁷. The fact that the appointment of members of the Council of State could only be by an absolute majority of votes undoubtedly strengthened the relationship between the Council of State and the Sejm. In case of vacant in-

¹³ M. Rybicki, *Konstytucja Polskiej Rzeczypospolitej Ludowej z 1952 r.*, [in:] *Konstytucje Polski*, ed. M. Kallas, Warsaw 1990, p. 382.

¹⁴ F. Siemieński, op.cit., p. 276.

¹⁵ W. Zamkowski, *Jedność i podział władzy w Polsce Ludowej*, "Zeszyty Naukowe Uniwersytetu Wrocławskiego. Nauki społeczne" 1961, No. 41, p. 62.

¹⁶ Dz.U. 1976, No. 7, item 36.

¹⁷ Dz.U. 1957, No. 19, item 145.

dividual positions in the Council of State during the session – according with the provisions of the regulations (Article 47 paragraph 2) – the Sejm made a supplementary election during the session. If, however, the vacancies took place between sessions, by-elections were made by the Sejm at the next session. Supplementary elections were made in the same manner as in the ordinary election of the Council of State.

The election to individual positions took place separately, “unless the Sejm decided otherwise” (Article 47 (3) of the Rules of Procedure). According to accepted practice, candidates for the Council of State were submitted on behalf of the Central Committee for Conciliation of Political Parties and Parties and parliamentary clubs. Voting took place separately during the election of the chairman of the Council of State, and the other candidates were voted jointly¹⁸.

From 1961, the custom was formed that the candidates for the chairmanship of the Council of State were presented – on behalf of the Central Coordinating Commission – by the first secretary of the Central Committee of PZPR. On the other hand, there was no uniform way of submitting proposals for filling the remaining positions. The selection of the entire composition of the State Council usually took place in two stages. First, the chairman was voted for, and then the remaining members of the Council were elected¹⁹. In addition to the chairman, the body was composed of four deputy chairmen, a secretary and eleven members. This number of the State Council dates from May 15, 1961, when the Sejm adopted an amendment to the Article 24 paragraph 1 of the Constitution, concerning its composition. Previously, the Council consisted of 15 people²⁰. The constitution and constitutional practice knew some restrictions on the election to the Council of State (the incompatibility principle). The Article 29 of the Constitution provided that the Speaker and deputy speakers of the Sejm could only be elected to the position of deputy chairman or members of the Council, which at the same time meant

¹⁸ Z. Jarosz, *Rada Państwa*, [in:] *Prawo konstytucyjne*, eds. Z. Jarosz, S. Zawadzki, Poznań 1976, p. 414.

¹⁹ T. Moldawa, *Sejm Polskiej Rzeczypospolitej Ludowej*, [in:] *Historia Sejmu Polskiego*, ed. A. Ajnenkiel, Warsaw 1989, p. 231.

²⁰ The change concerned members in the strict sense; their number was increased from 9 to 11, motivating this change by expanding the scope of the Council of State's activity, in connection with the adoption of the acts during the second term of the Sejm: on the Supreme Audit Office, on universities and the Polish Academy of Sciences.

a ban on electing them as chairman and secretary of the Council. In practice, positions in the Council of State were not combined with positions in the Presidium of the Sejm and the Council of Ministers, as well as in the Socio-Economic Council at the Sejm²¹. The rule of subordination of the Council of State to the Sejm resulted in the latter's right to make changes in the composition of the Council during the term of office, which the Sejm often used.

As regards the organization and mode of operation of the Council of State, the constitution provided that the Council of State was to act on the principle of collegiality (Article 30 (3)) and that the chairman or his or her deputies represented the Council of State externally (Article 30 (4)). This meant that in all matters referred to the Council of State, it made decisions collectively, although some activities, which by their nature were unsuitable for collegial implementation, were performed on behalf and by the authorization of the Council by its chairman or deputy chairman in the presence of a secretary or another member of the Council (e.g. receiving credentials and recalling diplomatic representatives of other countries)²². The Council of State determined organizational rules, adopting at the beginning of each term new or modified regulations of its work – not subject to publication²³.

There was a position in Polish socialist literature according to which the Council of State was a representative body. According to the supporters of this view, such a character was given by its appointment by the Sejm from among its group – people's representatives. A. Burda²⁴ and W. Skrzydło²⁵, in turn, expressed the view that the State Council was indirectly representative²⁶.

According to M. Sobolewski²⁷, only the Sejm as a whole could be the representative body of the nation. The Council of State was not elected directly by the nation, but by the Sejm from among a narrower group of deputies. De-

²¹ Z. Witkowski, *Przemiany w zakresie...*, p. 72.

²² J. Galster, E. Mizerski, Z. Witkowski, *Nowe uregulowania w polskim prawie konstytucyjnym (1980–1987)*, Toruń 1989, p. 85.

²³ Ibidem, p. 86.

²⁴ A. Burda, *Polskie prawo państwowe*, Warsaw 1977, p. 279.

²⁵ W. Skrzydło, *Ustrój polityczny PRL*, Rzeszów 1978, p. 115.

²⁶ Compare: M. Rybicki, *Rada Państwa*, [in:] *Ustrój polityczny PRL*, ed. W. Skrzydło, Rzeszów 1978, p. 166.

²⁷ M. Sobolewski, *Z problematyki socjalistycznego parlamentaryzmu*, "Państwo i Prawo" 1956, No. 12, p. 957.

cisions of the Council of State were made in a much smaller group of representatives of voters. Therefore, it should be stated that the State Council was an independent, non-representative body²⁸.

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²⁸ M. Rybicki, op.cit., p. 382. Compare: W. Zakrzewski, K. Opalek, *Z zagadnień praworządności socjalistycznej*, Warsaw 1958, p. 157; J. Stembrowicz, op.cit., p. 18.