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**Comments on the Amendment of The Standing Orders
of the Sejm of the Republic of Poland Dated 26 March 2020**

Keywords: Sejm, Standing Orders of the Sejm, sitting, session

Słowa kluczowe: Sejm, regulamin Sejmu, posiedzenie

Abstract

On 26 March 2020, by a resolution adopted on 26 March 2020, the Standing Orders of the Sejm of the Republic of Poland were amended to allow the sessions to be conducted using electronic means of remote communication. These amendments raise serious reservations as to their constitutionality. This is due to the fact that the Constitution of 1997 stipulates that the Sejm and Senate shall meet at sessions, while the meeting, being a concept that has been defined, is defined as the assembly of MPs in one place in order to consider the matter under discussion. In addition, as parliamentary practice has demonstrated, the changes introduced have generated a number of problems related to Deputies' attendance at such remote sessions, participation in debates and casting votes. As a consequence, this may lead to weakening of the legitimacy of the work of the Chamber and a reduction in the capacity to exercise the mandate.

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Streszczenie**Kilka uwag na temat zmiany Regulaminu Sejmu
Rzeczypospolitej Polskiej z dnia 26 marca 2020 r.**

Sejm uchwałą podjętą dnia 26 marca 2020 r. wprowadził do regulaminu Sejmu zmiany umożliwiające prowadzenie obrad z wykorzystaniem środków elektronicznych umożliwiających komunikowanie się na odległość. Wprowadzone zmiany budzą poważne zastrzeżenia co do ich konstytucyjności. Wynika to z faktu, że Konstytucja z 1997 r. stanowi, że Sejm i Senat obradują na posiedzeniach, zaś posiedzenie, będąc pojęciem zastanym, definiowane jest jako zebranie się posłów w jednym miejscu celem rozpatrzenia sprawy będącej przedmiotem obrad. Ponadto wprowadzone zmiany, jak pokazuje praktyka parlamentarna, generują szereg problemów związanych z uczestniczeniem posłów w takich zdalnych posiedzeniach, udziałem w dyskusji i głosowaniach. W konsekwencji może to prowadzić do osłabienia legitymizacji prac izby i ograniczenia możliwości wykonywania mandatu.

On 26 March 2020 the Sejm passed an amendment to the Standing Orders of the Sejm of the Republic of Poland², which introduced the possibility of conducting sittings by means of remote communication. The draft resolution was submitted by the Presidium of the Sejm. The justification³ indicates that due to the SARS-CoV-2 pandemic, the necessity to react quickly and take steps aimed at eliminating the risk of increasing the number of COVID-19 patients, “the awareness of responsibility for the fate of the state prompts the authorities to adopt procedural solutions which will enable the Sejm to proceed despite the epidemic and to introduce legislation aimed at preventing its development”. The authors of the project pointed out that organizing the session in the traditional form would pose a risk of spreading the epidemic, posing a threat to the Deputies, employees of the Chancellery of the Sejm,

² Resolution of the Sejm of the Republic of Poland of 26 March 2020 on amending the Standing Orders of the Sejm of the Republic of Poland (M.P., item 327).

³ Parliamentary paper 286 of the 9th term Sejm.

Marshal's Guard officers and their families, and therefore, in order to guarantee the "ability of the Sejm to perform its legislative function, reduce the risk of infections, ensure representation of citizens in the lawmaking process", amendments are proposed to enable Deputies to participate in the session of the Sejm, committee or subcommittee using electronic means of communication enabling remote communication. At the same time, the drafters pointed out that their intention is not to restrict Deputies' rights, but to ensure the possibility of exercising the mandate in situations in which there is a threat to life and health.

According with the principle of statutory autonomy, the Sejm determines, by means of the standing orders, the internal organization, the agenda, the mode of appointment and operation of its bodies, the manner of performing the constitutional and statutory duties of state bodies in relation to the Sejm. The Standing Orders of the Sejm is a normative act that meets the criterion of permanence⁴, which means that the temporary scope of validity is not limited solely to the term in which it has been adopted. Remaining of the Standing Orders in force goes beyond the framework of the term of office and its actual duration depends only on the Chamber, which may adopt new standing orders at any time. In doing so, permanence does not mean unchangeability. Introducing changes to the standing orders is the right of the Chamber that may be exercised freely by the Sejm, provided that the changes are consistent with the provisions of the current Constitution.

The 1992 Standing Orders of the Sejm⁵, currently in force, thus an act with almost thirty years' history, has been amended more than 80 times. The changes were of a highly diverse nature, from the technical ones consisting in changing the name of the standing parliamentary committee to the changes introducing new institutions (e.g. a public hearing). Undoubtedly, the change adopted on 26 March 2020 is not a technical one, as it fundamentally changes the way the Chamber is supposed to function. It is also an incidental change, because pursuant to the Art. 2 of the resolution, the adopted pro-

⁴ L. Garlicki, *Konstytucja-Regulamin Sejmu-Ustawa*, "Przegląd Sejmowy" 2000, No. 3, p. 16.

⁵ Resolution of the Sejm of the Republic of Poland of 30 July 1992. Standing Orders of the Sejm of the Republic of Poland (u.t. M.P. 2019, item 1028 as amended), hereinafter referred to as SO.

visions expire on 30 June 2020. And at this point the first question about the actual intentions of the authors of the project should be asked. Since the proposed changes were to reduce the threat to life and health, which may appear during the course of either a state of exception or an epidemic, it seems that it would be justified to adopt appropriate legislative acts which would enable the functioning of the Chamber in case of similar threats also in the future. Moreover, a timeframe was indicated, but the drafters did not explain in the explanatory memorandum to the draft why the proposed regulations should cease to apply on 30 June 2020. At the time of submitting the draft, there was no data allowing us to believe that on 30 June 2020 the threat will have passed. Therefore, it seems that since it was indicated that a session of the Sejm with the use of means of remote communication may take place in case of the introduction of one of the states of exception or epidemic, it was not necessary to indicate the date of expiry of the mentioned regulations.

The amendments adopted by the resolution of 26 March 2020 concern the manner of holding Sejm sessions and sittings of the internal bodies of the Chamber, primarily the committees of the Sejm (also subcommittees of the Sejm). The constitutional legislator did not devote much attention to the problems of the functioning of the chambers of the Polish Parliament, referring in this respect to the provisions of the Sejm and Senate regulations thus addressing the principle of the chambers' statutory autonomy. Nevertheless, the key provision in the Basic Law was that the Sejm and Senate hold sessions (Art. 109(1)), or at least the provisions determining the course of the legislative procedure (Art. 118–122). Article 109(1) thus defines the form in which the chambers operate, while at the same time stipulating a permanent mode of operation⁶. The regulation contained in Art. 109 has been repeated in the standing orders of both chambers. In the Standing Orders of the Sejm, sessions are indicated as a mode of operation in Art. 149 for the committees of the Sejm, and in Art. 169(1) for the entire Chamber.

It should be emphasized that neither the existing legislation nor the current provisions of parliamentary law define the concept of a session. Therefore, decoding its content requires the use of language definitions and well-estab-

⁶ More: E. Gierach, *Komentarz do art. 109*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Tom II. Komentarz do art. 87–243*, eds. M. Safjan, L. Bosek, Warsaw 2016.

lished views of legal doctrine representatives. In the dictionary of the Polish language by W. Doroszewski a session was defined as a “meeting, a gathering of people to discuss a matter”⁷. In legal literature, on the other hand, a session is defined as a meeting of the Chamber’s deputies chaired by the Marshal in order to discuss matters included in the agenda⁸. It can therefore be assumed that a session of the Chamber requires the Deputies to meet in one place in order to deliberate on all matters on the agenda. Such an understanding of the concept of a session seems to be also supported by the fact that the legislator has repeatedly used the term “session room” in the Standing Orders of the Sejm⁹. Thus, the intention of the authors of the Standing Orders of the Sejm supported also by the previously binding regulatory solutions is that the Sejm should deliberate in one room, referred to as the plenary session room¹⁰. Essentially, sessions of the Sejm take place in the largest hall of the Sejm building complex located at Wiejska Street, specially arranged for this purpose and equipped with the necessary apparatus. The provisions of the Constitution, as well as the provisions of the Standing Orders of the Sejm do not mention the issue of determining a specific venue for sessions, apart from the use of the phrase “session room”, they do not determine the obligation to hold a session in one particular room, either. It can therefore be assumed that it is acceptable to hold a session in another room, provided, however, that all

⁷ <https://sjp.pwn.pl/doroszewski/posiedzenie;5478327.html> (1.05.2020).

⁸ L. Garlicki, *Polskie prawo konstytucyjne*, Warsaw 2016, p. 236; B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2012; E. Gierach, *Komentarz...*; P. Radziejewicz, *Komentarz do art. 109*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Wolters Kluwer Polska 2019, R. Balicki, *O sejmowym posiedzeniu, którego nie było-uwagi na marginesie obrad w Sali Kolumnowej w dniu 16 grudnia 2016 r.*, “Gdańskie Studia Prawnicze” 2018, No. 2, p. 420.

⁹ Art. 7(1), sentence 2 of the Sejm’s Standing Orders states that ‘During the sittings of the Sejm, Deputies shall sit in the Chamber at fixed places’, Art. 170(4) ‘The right to attend the Chamber shall also belong to persons and delegations invited by the Marshal of the Sejm, as well as employees of the Chancellery of the Sejm authorized by him’, Art. 172(1), point 3: “Sittings of the Sejm shall be open to the public. The public nature of sittings of the Sejm shall be particularly ensured by: enabling the public, subject to regulations made by the Marshal of the Sejm, to watch the sittings from the gallery in the Chamber”.

¹⁰ J. Mordwilko, *Interpretacja przepisów określających prawa i obowiązki posła w głosowaniach na posiedzeniu plenarnym Sejmu i komisji sejmowych*, [in:] *Regulamin Sejmu w opiniach Biura Analiz Sejmowych. Tom I*, ed. W. Odrowąż-Sypniewski, Warsaw 2010, p. 43.

the technical conditions for conducting the session are met and most importantly, it will not lead to a curtailment of the rights of the parliamentary opposition¹¹. The choice of a venue should also satisfy the Chamber with due dignity and promote the preservation of solemnity in the performance of its constitutional functions. In the history of Polish parliamentarianism, there have been situations in which sessions of the Chamber were moved to other places, either within or even outside the Sejm complex, but these have always been exceptional situations, justified by special circumstances such as historical¹² or factual ones¹³.

The amendment to the Standing Orders adopted on 26 March 2020 introduced a new form of conducting the sessions – a session using electronic means of communication enabling remote communication. In this mode the session may be held in case of introducing one of the states of exception – martial law, state of emergency, state of natural disaster, and state of epidemics – i.e. the legal situation introduced in a given area in connection with the occurrence of an epidemic in order to take counter-epidemic and preventive actions specified in the Act to minimize the effects of an epidemic¹⁴. The list is of an enumerating nature, although it should be noted that the legislator adopted an extensive catalogue of situations allowing for a session under this procedure – it covered all three states of exception, as well as the state of the epidemic¹⁵. The circumstances indicated are undoubtedly of an extraordinary significance and a session can be held in a different form only upon their introduction. At the same time, it should be stressed that the regulations allow,

¹¹ Attention should be paid to the session of the Sejm on 16 December 2016, which was moved to the Column Hall, during which opposition MPs were prevented from participating in the session and voting. R. Balicki, *O sejmowym posiedzeniu...*, p. 420 et seq.

¹² As an example, we can point out the first after the war exit meeting of the Sejm on 29 April 2000 in Gniezno to commemorate the thousandth anniversary of the Gniezno Convention.

¹³ 12 August 2010. The 73rd sitting of the Sejm for the 6th term of office was held in the Column Hall, and this was due to the need to adopt laws aimed at removing the effects of the flooding while the Plenary Hall was being renovated. See also R. Balicki, *O sejmowym posiedzeniu...*, p. 420 et seq.

¹⁴ Art. 2(22) of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (Dz.U. 2019, item 1239, as amended).

¹⁵ In the first version of the draft, the sitting with the use of means of remote communication could also take place in a state of epidemic danger.

not impose, the holding of a session using electronic means of communication enabling remote communication, which is determined by the phrase a “session may be held”. Thus, it should be assumed that sessions of the Sejm can still be held in the so called “traditional form” in the plenary session room, but they can also be held remotely. It should be highlighted that the adopted amendment to the Standing Orders of the Sejm may raise doubts as to its compliance with the Basic Law – the Art. 109. As it has been stressed earlier, the concept of a session has not been defined in a legal form, and therefore its meaning ought to be sought in the views of doctrine. In this case, it is emphasized that a session is a gathering of Deputies, meeting in one place, to deliberate on common issues. Remote “sessions” do not satisfy this condition, as it is difficult to talk about a meeting of MPs in one place with a virtual reality in mind, all the more so as the practice of the Sejm has gone in the direction of combining elements of a traditional meeting that takes place in the Sejm’s meeting room with the presence of Deputies in other rooms of the Sejm’s complex, who thus participate in the session, and the participation of Deputies who are not physically in the premises of the Sejm.

The Marshal of the Sejm is the body deciding on the form of a session. The Marshal’s decision must be preceded by consultation with the Council of Seniors, but the very introduction of a state of exception or the announcement of the state of epidemic allows the Marshal of the Sejm to decide to conduct a session of the Chamber using means of remote communication. As a result of the decision of the Marshal of the Sejm to hold a meeting using means of electronic communication enabling remote communication, it is necessary for the Chancellery of the Sejm to provide Deputies with access to technical means enabling them to participate in the session. What is important is that the amended provisions do not provide for automatic access for all Deputies to technical means of remote communication, and the condition is that the Deputy submits an application (Art. 198a(3) of the SO of the Sejm).

Additionally, entities that may or are obliged to participate in a session of the Sejm must apply for access to means of remote communication. In the context of the obligation on Members of the Council of Ministers and the President of the Supreme Audit Office to participate in a session of the Sejm, it seems that such access should be generated automatically (unless a Deputy of the government does not intend to be present in the session room), with-

out the need to apply. It is also difficult to imagine the President applying to the Chancellery of the Sejm to take part in such a meeting, for example, in order to make a formal speech.

Article 198c, which provides that the participation in a session with the use of electronic means of distance communication shall be on an equal footing with other forms of participation in a session of the Sejm and may not result in the exclusion or limitation of the Deputy's rights as defined by law. That Article should be regarded as a provision of a guarantee nature. This provision should be interpreted as an order, addressed to the entities presiding over the Sejm's deliberations, the deliberations of parliamentary committees, to enable Deputies to perform their mandate, to exercise their rights as if the sitting were held in the traditional form. Such a purpose – a guarantee – should be attributed to Art. 198d, which allows documents to be submitted in paper form when the Standing Orders of the Sejm provide for their submission in electronic form.

It should be made clear that the actual possibility of active participation of opposition Deputies in sessions is very often hampered, and therefore greater attention should be paid to the possibility of exercising the mandate at remote sessions. The adopted amendment introduced changes in the way debates are conducted in this respect. Speaking time for Deputies has been reduced and a rule has been adopted whereby a Deputy may speak on a particular matter only once during the debate. The latter solution should be particularly objectionable as it limits the rights of Deputies to take part in discussions.

Conducting sessions via electronic means allowing for distance communication also entails changes in voting practices. Under the added Art. 198g, voting may take place using electronic means of communication and is deemed to be equivalent to voting under Art. 188(2), i.e. by show of hands and use of a device for counting votes and the use of ballot papers signed in the Deputy's name (personal vote). At this point it should be pointed out that the legislator edited Art. 198g(2) in very unfortunate fashion. First of all, it seems that under the conditions of remote voting it will not be possible to vote personally, which by its very nature requires throwing the vote (a completed ballot paper bearing the Deputy's name and surname) into the ballot box personally, and this, with some Deputies actually being outside the Sejm, will be impossible. Therefore, it should be assumed that all voting will be perceived as the

one referred to in Art. 188(2)(1), and therefore all may be subject to reconsideration if the result of the vote raises justified doubts¹⁶.

The possibility of holding sessions with the use of electronic means enabling remote communication has also been introduced with regard to committees and subcommittees of the Sejm. The Marshal of the Sejm decides on the possibility of holding a meeting in this manner and convenes such meetings after consulting with the committee chairman. The provisions on conducting sessions of the Sejm remotely shall apply *mutatis mutandis* to remote sessions of committees. At this point, it is worth emphasizing that representatives of professional and social organizations, and committee experts may not participate in such committee sessions, which may have a negative impact on the committee's work.

Although the period during which sessions of the Chamber are conducted using electronic means enabling remote communication is relatively short, it gives an indication of the threat to the work of the Sejm and particularly the opposition MPs' capacity to carry out their mandate. It should be stressed that a mixed mechanism for organizing sessions has now been adopted in practice. A number of Deputies take part in them while they are in the session room, some take seats in other rooms, and some take part in the session from their places of residence. Indeed, the Marshal of the Sejm decides which Deputies may attend personally in the room, and his decision is based on rather vague criteria¹⁷. The fi-

¹⁶ A request for the vote to be reconsidered must be made in writing by the end of the sitting during which the vote was taken and must be supported by the signatures of at least 30 Deputies. The fulfilment of this last condition may be hindered, if a sufficient number of Deputies are not present in the Sejm building during the sitting. The amended rules do not indicate how applications or projects requiring the signatures of many Deputies are to be submitted 'remotely'. In this case, in view of the fact that the request must be submitted at the same sitting, barriers may arise to the effective submission of a request to reconsider the vote.

¹⁷ On 31 March 2020 the Civic Coalition Club indicated three Members who would attend the 9th Plenary Session. Finally, S. Nitras was denied access to the Plenary Hall, which, according to the director of the Sejm's Information Center (CIS), was due to his behavior during the previous session of the Sejm. The director of the CIS explained that 'the presence of 12 MPs in the Plenary Room plus the Presidium of the Sejm and representatives of the Council of Ministers was agreed. The designated Member was not accepted to represent the club in the Session Room. The direct reason was the behavior of the MP during the previous sitting. According to the Standing Orders, the Marshal of the Sejm is responsible for protecting the dignity and seriousness of the Chamber and organizing the work of Deputies, <https://>

nal decision as to which Deputies will be present in the session room should be made by the parliamentary club or circle. Since the number of seats in the meeting room is limited, clubs must be able to delegate those Deputies who are best prepared to work on issues on the agenda or who will best represent the interests of the club or group. The Marshal of the Sejm is obliged to supervise the course of the plenary session¹⁸, to keep the order in the room, to uphold the dignity of the room, but this cannot be tantamount to assuming a priori that some Deputies will disrupt the course of the session, and they cannot be deprived of the possibility of being in the room during the session on the sole basis of such assumption. The situation of the 9th session of the Sejm of the 9th parliamentary term is a dangerous precedent, because it may lead in the future to a situation in which the Marshal of the Sejm will claim the right to decide who can present the position of the club or the group during a parliamentary debate.

Further problems are related to the technical aspect of using electronic means of communication. According to the adopted amendment, these methods must guarantee the possibility to identify the person who uses them, to communicate in real time, in particular to speak, to make formal requests, and must guarantee the security of the information and communication system. The way in which the amendments were adopted, the lack of an adequate period of time during which the system could have been tested, gives rise to a number of technical issues which could lead to a real reduction in Deputies' rights. Deputies who vote remotely indicate that the system incorrectly allocates their votes¹⁹, technical malfunctions of mobile networks and lack of connectivity of Deputies, hampers the work of the Chamber²⁰, all

www.rmfm24.pl/fakty/polska/news-nitras-marszalek-witek-nie-dopuszcila-mnie-do-obrad-sejmu,nId,4413838 (1.05.2020).

¹⁸ P. Winczorek, *Uprawnienia Marszałka Sejmu do zapewnienia porządku na Sali obrad plenarnych Sejmu – obowiazujący stan prawny*, [in:] *Regulamin Sejmu w opiniach Biura Analiz Sejmowych. Tom II*, ed. W. Odrowąż-Sypniewski, Warsaw 2010, p. 411 et seq.; M. Granat, *Ocena uprawnień Marszałka Sejmu w zakresie zaprowadzania porządku na sali obrad plenarnych (uwagi de lege lata i de lege ferenda)*, [in:] *Regulamin Sejmu w opiniach Biura Analiz Sejmowych. Tom II*, ed. W. Odrowąż-Sypniewski, Warsaw 2010, p. 414 et seq.

¹⁹ <https://wiadomosci.gazeta.pl/wiadomosci/7,173952,25827404,system-zawiodl-potwierdzi-ze-glosy-nie-zostaly-wliczone.html> (1.05.2020).

²⁰ <https://www.wirtualnemedi.pl/arttykul/play-awaria-sms-ow-przyczyny-utrudnila-prace-poslom-w-sejmie-przesunieto-dyskusje-o-tarczy-antykrzysowej> (1.05.2020).

this has a negative impact not only on the performance of Deputies' mandates but also on the legitimacy of the work of the Parliament and the authority of the Sejm itself.

The last problem with the adopted amendment to the Standing Orders of the Sejm is that it is not feasible to check whether a Deputy participates in the vote in person. A confirmation of a Deputy's attendance at a remote sitting is being logged into the system. However, it is not possible to verify whether a Deputy has logged on personally or using a third-party login details. It is the duty of Deputies to attend sessions in person and to vote in person²¹, since voting for someone else shall give rise to criminal liability. In sessions held using electronic means of communication, it is not possible to check whether the Deputy is voting or, for example, whether it is their assistants making decisions "on their behalfs".

The amendments to the Standing Orders of the Sejm introduced by the Resolution of 26 March 2020 raise a lot of doubts, both as to the constitutionality of introducing remote sessions and as to the legislative correctness of the introduced changes and their purposefulness. The situation in which the Polish state finds itself is extraordinary and requires extraordinary solutions. In this case, however, the introduced changes may have a negative impact on the manner in which the Chamber works, and consequently on the dignity of the Chamber, its authority and legitimacy of the laws passed under this mode. An additional burden, resulting, for example, from the lack of technical preparation for remote sittings, is the danger of limiting the rights of MPs, in particular those representing the opposition.

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²¹ M. Zubik, *Sposób ustalenia osób głosujących w świetle Konstytucji i regulaminu Sejmu*, [in:] *Regulamin Sejmu w opiniach Biura Analiz Sejmowych*, vol. I, ed. W. Odrowąż-Sypniewski, Warsaw 2010, pp. 40–41.

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