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## **Legislative Function of the Second Chamber of Parliament of Poland Against the Background of the Solutions of Czech Republic and Romania: *de lege lata v. de lege ferenda***

### **SUMMARY:**

The power of a particular parliamentary chamber is determined by its competences, with law-making being most important. In Poland, the adoption of a bicameral solution was not without controversy. There are many theses in the doctrine that puts into question the adopted order, proposing an attempt to remodel the system. The present study represents an attempt to compare the legislative function of the Senate of Poland, Czech Republic and Romania. The research hypothesis is that the Polish second chamber's competences are most limited in this respect.

The choice of these countries is led by their geographical proximity – they are located in Central and Eastern Europe and share a common history. Besides, they also have similar cultural links often. These countries also have

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bicameral parliaments being uncommon in the region. It is worth noting that these countries had the second chambers of the parliament in their current form since 1990s.

**Key words:** Parliament, senate, legislative, second chamber.

## I. Introduction

The legislative function is to regulate social life areas by means of enacted laws. The parliament is responsible for this process. The power of a particular parliamentary chamber is determined by its competences, with law-making being most important. In Poland, the adoption of a bicameral solution was not without controversy. There are many theses in the doctrine that puts into question the adopted order, proposing an attempt to remodel the system<sup>1</sup>. The present study represents an attempt to compare the legislative function of the Senate of Poland, Czech Republic and Romania. The research hypothesis is that the Polish second chamber's competences are most limited in this respect.

The choice of these countries is led by their geographical proximity – they are located in Central and Eastern Europe<sup>2</sup> and share a common history. Besides, they also have similar cultural links often. These countries also have bicameral parliaments being uncommon in the region<sup>3</sup>. It is worth noting that these countries had the second chambers of the parliament in their current form since 1990s.

<sup>1</sup> See: Opaliński B., Uwagi o potrzebie modyfikacji drugiej izby parlamentu we współczesnym polskim systemie ustrojowym, *Przegląd Prawa Konstytucyjnego*, No. 1, 2012; Jamróz L., Refleksje nad ustrojową pozycją Senatu RP, in: *Prawo, parlament i egzekutywa we współczesnych systemach rządów – Księga poświęcona pamięci profesora Jerzego Stembrowicza*, edited by S. Bożyk, Białystok, 2009, 70; Woźnicki M., O potrzebie zmiany Konstytucji RP z 2 kwietnia 1997 r. w zakresie kadencji oraz funkcji Sejmu i Senatu – kilka uwag na tle konstytucji Czech i Słowacji, *Przegląd Prawa Konstytucyjnego*, No. 2, 2022, 31.

<sup>2</sup> The most commonly referred to area of Central and Eastern Europe was adopted. See: Kłoczowski J., Europa Środkowo-Wschodnia i jej miejsce w Europie, *Rocznik Instytutu Europy Środkowo-Wschodniej*, No. 1, 2007, 11-33; Skotnicki K., Senat Rzeczypospoliej Polskiej i Senat Republiki Czeskiej. Analiza porównawczo-prawna, *Acta Universitatis Lodzensis, Folia Iuridica*, No. 70, 2009, 103.

<sup>3</sup> Articles 10(2) and 95 of the Constitution of the Republic of Poland of 2 April 1997 (*Journal of Laws* 1997, 78, 483); Article 15(2) *Ústava České Republiky*, 1992; Article 90 Constitution of Romania, 1991; Sebe M., Vas E., The Untapped Potential of Direct Democracy in Romania, in: *Direct Democracy in the European Union. The Myth of a Citizens' Union*, edited by S. Blockmans and S. Russack, Brussels, 2018, 345-346; Apahideanu I., Unicameralism versus Bicameralism Revisited: The Case of Romania, *Studia Politica, Romanian Political Science Review*, Vol. 14, No. 1, 2014, 47-88; Admittedly, a consultative referendum was held in Romania in 2009, the majority of citizens voted for the abolition of the Senate, however, its outcome did not result in changes to the structure of the parliament.

## II. Legislative Function in Polish Constitutional Solutions

According to the Constitution of the Republic of Poland, the legislative initiative<sup>4</sup> is vested in the MPs, President, Council of Ministers, group of at least 100,000 citizens and the Senate as well. With regard to the second parliamentary chamber as a whole, it means that it is exercised on the basis of a resolution the chamber adopts *in gremio*<sup>5</sup>. There is no analogy here to the MP's initiative. It is meant as an expression of the will of the nation and the second chamber is its voice<sup>6</sup>.

The Senate has two competences as part of its participation in the legislative process. The first one is to take a position on the laws passed by the Sejm, while the second one is to put forward legislative initiatives<sup>7</sup>. The Senate has a task of reviewing and correcting bills adopted by the Sejm.

With regard to a legislative initiative, the Senate, on the motion of a committee or at least ten Senators, launches its proceedings. Accordingly, the Marshal (Speaker) of the Senate informs the Prime Minister and the Marshal of the Sejm concerning the fact<sup>8</sup>. The motion, including the bill (draft law), is submitted to the Marshal of the Senate, who forwards it to the relevant committees, including the legislative one. The committees deliberate collectively and submit a jointly developed report to the Senate within maximum 2 months. It shall include issues as to the compatibility of the bill with EU legislation and will be presented by a rapporteur selected out of the Senators<sup>9</sup>. During the second reading, a report is presented to the Senate, a discussion is held and motions are put forward, concluding with the referral of the bill to the relevant committee that is obliged to respond to the motions. If there are no motions, the Senate opens the third reading. During it, an additional committee report is presented and the bill is put to the vote. A bill is passed by the Senate if a simple majority of Senators vote in favour of it, in the presence of at least half of the Senators. Howev-

<sup>4</sup> Article 118 of the Constitution of the Republic of Poland, 1997.

<sup>5</sup> Szepietowska B., Proces ustawodawczy, in: Parlament, model konstytucyjny a praktyka ustrojowa, edited by Z. Jarosz, Warszawa, 2006, 103.

<sup>6</sup> Banaszak B., Rola Senatu w procesie legislacyjnym, Przegląd Sejmowy, No. 5, 2000, 30.

<sup>7</sup> Read more about the legislative functions of parliamentary committees: Pajdała H., Komisje w parlamencie współczesnym, Warszawa, 2001, 161-167. On the legislative process since the enactment of the 1997 Constitution of the Republic of Poland see: Wronkowska S., Proces prawodawczy dwóch dekad – sukcesy i niepowodzenia, Ruch Prawniczy, Ekonomiczny i Socjologiczny, No. 2, 2009, 111-128.

<sup>8</sup> Article 76 of the Senate of the Republic of Poland Resolution of 23 November 1990.

<sup>9</sup> See: Kruk M., Prawo inicjatywy ustawodawczej w nowej Konstytucji RP, Przegląd Sejmowy, No. 2, 1998.

er, if a resolution fails to be adopted in case of a tie vote or if the Senate resigns to hold a vote, the Rules of the Senate provide that the motion in question is again referred to committees for further work. It does not mean that the motion is rejected, however, the second reading phase is extended<sup>10</sup>.

The Senate is noticeably more active on legislative matters in relation to acts enacted by the Sejm<sup>11</sup>. There is sometimes a conviction among the deputies of the first chamber that the second chamber existence can cause a reckless attitude in drafting a law because there is the certainty that the second chamber can tackle the bill once again<sup>12</sup>.

Undoubtedly, the Republic Constitution identifies bills as the outcome of the first chamber's work. However, the proceedings in the first chamber do not conclude the entire legislative procedure. The Senate can influence and modify the bill. It should be noted that bills initiated by the Senate are subject to consideration by the second chamber. Once a bill is received by the Senate, the written proposal including the bill is submitted to the Marshal, who refers it to the appropriate committee and the Committee on Legislation. The committees may shape the bill in accordance with their discretion, without obtaining a consent of the original initiator. Meetings may also be attended by other Senators, overnment officials, government administration members or MPs. They may take part in the discussion, propose amendments but they do not have a right to vote.

Draft resolutions are also submitted to the Marshal and undergo the same procedure. The Marshal is entitled to request the proposers of a motion for its justification.<sup>13</sup> The committees are obliged to submit a report proposing the position of the Senate on a particular issue.<sup>14</sup> The bill or draft resolution is then considered at first reading, but not earlier than 14 days after the bills' delivery to the Senators. After the debates, the second chamber adopts a resolution, in which it may include one of the proposed views, i.e., to accept the bill without amendment. In this case the bill is sent back to the Marshal and forwarded to the President for promulgation. The President can also make amendments to the bill as a resolution by an absolute majority in the presence

<sup>10</sup> Banaszak B., *Przesłanki istnienia Senatu w Polsce*, in: *Kierunki zmian pozycji ustrojowej i funkcji Senatu RP*, edited by A. Bisztyga and P. Zientarski, Warszawa, 2014, 18-22.

<sup>11</sup> Article 121(1) of the Constitution of the Republic of Poland, 1997.

<sup>12</sup> Jaskiernia J., *Wizja parlamentu w nowej Konstytucji RP*, Warszawa, 1994, 20.

<sup>13</sup> See: Article 84 of the Resolution of the Senate of the Republic of Poland of 23 November 1990.

<sup>14</sup> Bożyk S., *Senat Rzeczypospolitej Polskiej*, in: *Izby drugie parlamentu*, edited by E. Zwierzchowski, Białystok, 1996, 54.

of at least half of the Senators.<sup>15</sup> Afterwards, the bill returns to the Sejm, which is entitled to reject it. The amendments that the Senate makes, may not, however, go beyond the subject matter of the specific bill. Notably, the Senate-proposed amendments occasionally lead to disputes between the two parliamentary chambers, which should be resolved by the Constitutional Tribunal. It indicates that an amendment is a secondary proposal to a legislative initiative. Thus, the right to submit amendments by the Senate cannot be a legislative initiative.<sup>16</sup> The subsequent judgment indicates that amendments may only concern the subject matter of a bill referred to the Senate. Therefore, the second chamber cannot replace its subject matter with a different one, as it means introducing its own legislative initiative.<sup>17</sup> The Constitutional Tribunal also points out that the Senate has a limited scope of amendments, which is clear under the Article 121(2) of the Constitution of Poland. This is because they are submitted during the final phase of the entire proceedings, as the Senate makes amendments to a bill already enacted by the Sejm and not to its bill as well.<sup>18</sup>

The third and most far-reaching competence is the possibility to entirely reject the bill. However, it does not mean that the entire bill is definitively cancelled. The Sejm can reject the motion at this phase by an absolute majority in the presence of at least half of MPs. When this fails, however, the legislative process must resume.<sup>19</sup> Another option is a specific reaction, namely, the Senate's inability to respond to a bill passed by the Sejm within the specified 30-day period, as provided for in the Constitution of the Republic of Poland<sup>20</sup>. Such a course of conduct implies full acceptance of the bill, so the Marshal of the Sejm is empowered to send it to the President of Poland<sup>21</sup>.

Notably, Article 121 of the Constitution of Poland provides that the Senate, after the Sejm refers a bill to it, has 30 days to take one of the three steps mentioned

<sup>15</sup> See Grzybowski M., *Poprawki Senatu do ustawy uchwalonej przez Sejm w świetle Konstytucji RP z 1997 i orzecznictwa Trybunału Konstytucyjnego*, in: *Stanowienie prawa-kompetencje Senatu w procesie legislacyjnym. Materiały z konferencji zorganizowanej przez Komisję Ustawodawstwa i Praworządności pod patronatem Marszałka Senatu RP Longina Pastusiaka 22 października 2002r.*, Warszawa, 2002, 27.

<sup>16</sup> Judgment of the Constitutional Tribunal of Poland 24 June 1998, K 3/98, OTK ZU, 4/1998.

<sup>17</sup> Judgment of the Constitutional Tribunal of Poland of 23 February 1999, K. 25/98, OTK ZU, 2/1999.

<sup>18</sup> Cf. judgment of the Constitutional Tribunal of Poland of 19 September 2008, K 5/07, OTK ZU 2008/7A/124.

<sup>19</sup> Kudej M., *Postępowanie ustawodawcze w Sejmie RP*, Warszawa, 1998, 80; Garlicki L., *Polskie prawo konstytucyjne, zarys wykładu*, 15<sup>th</sup> edition, Warszawa, 2011, 240.

<sup>20</sup> See Article 121(2) of the Constitution of the Republic of Poland.

<sup>21</sup> Dobrowolski M., *Prawo Senatu do wnoszenia poprawek do ustaw uchwalonych przez Sejm w świetle orzecznictwa Trybunału Konstytucyjnego*, *Przegląd Sejmowy*, No. 5, 2001, 26.

above. If it fails to meet the required time limit, the bill is enacted in the wording passed by the Sejm.

It should also be emphasised that none of the legal acts indicates a specific time limit in which the Sejm must consider the position of the Senate in case of amendments. This may result in failure of the legislative process to be concluded until the end of the parliamentary tenure, which means the conclusion of the legislative procedure, being in compliance with the principle of the discontinuation of parliamentary work. However, when the Sejm acts in this way it is a violation of the constitutional principle of a democratic state ruled by law. It will also obviously be an impediment to the Senate in the performance of its duties.

The Senate's involvement in the legislative process definitely improves the law-making quality in Poland. The abolition of the second parliamentary chamber can increase the workload of the Constitutional Tribunal in terms of reviewing bills enacted in haste by the unicameral parliament.<sup>22</sup> However, the Constitutional Tribunal also emphasizes that the possibility of exercising the legislative function<sup>23</sup> is insufficiently ensured by the Constitution and emphasised its limited powers in this respect.<sup>24</sup>

### III. The Senate's role in the legislative process in Romania

When discussing the legislative process in Romania, it should be noted that its Senate, compared to the Czech one, has even more far-reaching competences as legislative proposals can be submitted to both chambers of parliament. The solutions of the Basic Law (Constitution) in Romania point to the symmetric bicameralism model of the parliament in terms of legislation.<sup>25</sup>

<sup>22</sup> Banaszak B., Przesłanki istnienia Senatu w Polsce, in: *Kierunki zmian pozycji ustrojowej i funkcji Senatu RP*, edited by A. Bisztyga and P. Zientarski, Warszawa, 2014, 18-22.

<sup>23</sup> See: judgements of the Constitutional Tribunal of Poland of: 21 November 1993, K 5/93 OTK 1993, No. 2, 39; 9 January 1996, K 18/95 OTK ZU 1996, No. 1, 1; 22 September 1997, K 25/97 OTK ZU 1997, No. 3-4, 35; 24 June 1998, K 3/98 OTK ZU 1998, No. 4, 52; 23 February 1999, K 25/98 OTK ZU 1999, No. 2, 23; 19 June 2002, K 11/02 OTK ZU 2002 4A, No. 43; 14 June 2002, K 14/02 OTK ZU 2002 No. 4A, 45.

<sup>24</sup> See: Banaszak B., Rola Senatu w procesie legislacyjnym, *Przegląd Sejmowy*, No. 5, 2000, 32; about amendments in the Senate see: Skwarka B., Orłowski W., Zakres poprawek Senatu – problemy teorii i praktyki, *Studia Prawnicze*, No. 3-4, 2001; Grabowski R., Refleksje nad polskim systemem parlamentaryzmu, *Przegląd Prawa Konstytucyjnego*, No. 5, 2018, 37.

<sup>25</sup> See more: Ionescu C., Organizarea bicamerală a Parlamentului României între tradiție istorică și oportunitate politică, *Pandectele Române*, No. 7, 2014, 25-41; Chelaru I., Bicameralismul in Romania, *Curierul Judiciar*, No. 152, 2016, 152-153.

According to the Constitution, the legislative initiative is vested in the Government (which submits proposals). Legislative proposals are also submitted by Senators, MPs and a group of at least 100,000 citizens with the provision that they must represent at least 1/4 of the country provinces and the city of Bucharest, provided that there must be 5,000 signatures in each province.<sup>26</sup> Until 2003, the figure was 250,000 citizens and 10,000 signatures in each province, respectively. The legislator thus wanted the legislative initiative to be supra-local, to concern national rather than local issues. It should also be noted that citizens' bills cannot concern fiscal policy, international affairs, as well as amnesty and pardoning.<sup>27</sup>

The Government can submit a bill to any chamber of parliament and the proceedings that commence in that chamber. Thus, both chambers have equal powers to legislate. Senators and MPs have equal rights to propose an individual legislative initiative. Senators, MPs and citizens submit legislative proposals, which cannot concern the national public budget,<sup>28</sup> laws that authorise the Government to issue decree-laws<sup>29</sup> and laws or amendments that could entail significant public expenditures.<sup>30</sup>

Bills and legislative proposals shall be submitted to the lower chamber as the "first chamber to consider" if they concern international treaties or agreements, particular legislative acts that result from the application of international treaties or organic laws.<sup>31</sup> All other bills and legislative proposals are submitted to the Senate. The chamber must then proceed to adopt the bill within a maximum period of 45 days. In case of laws of 'particular complexity' or codes, the time limit is prolonged to 60 days.<sup>32</sup> If the above time limits are exceeded, it is assumed that the bill was adopted by the chamber. At this stage the bill is forwarded for consideration to the other chamber, which is also tasked to declare its position. If the second chamber amends the bill, it is returned to the editorial board of the competent chamber with an explanatory statement accepting or rejecting the amendments. Laws are passed in three readings. The bill is received by the presidium of the chamber, which forwards

<sup>26</sup> Article 74 of the Constitution of Romania, 1991; Article 89 of the Regulamentul Senatului, aprobat prin Hotărârea Senatului, 2005; Brodziński W., System konstytucyjny Rumunii, Warszawa, 2006, 48.

<sup>27</sup> Article 73 of the Constitution of Romania, 1991.

<sup>28</sup> Article 138 of the Constitution of Romania, 1991.

<sup>29</sup> Article 115 of the Constitution of Romania, 1991.

<sup>30</sup> Article 138(5) of the Constitution of Romania, 1991.

<sup>31</sup> Under Article 75(1) of the Constitution of Romania, 1991.

<sup>32</sup> Article 90(3) of the Regulamentul Senatului, aprobat prin Hotărârea Senatului, 2005.

it to the relevant committee. The latter prepares a report proposing the adoption of the bill with or without amendments or rejection of the bill entirely. Senators, MPs, parliamentary clubs and the government are entitled to submit written opinions, which are addressed to the presidium of the chamber in a specified time limit. They are included in the report.<sup>33</sup>

The second reading takes place during a plenary session of the chamber. It begins with an address by the proposer, who is to present the bill and justify the advisability of its enactment.<sup>34</sup> It is followed by the committee's preliminary assessment of the bill.<sup>35</sup> Subsequently, there is a debate in which the parliamentary groups take the floor. If the committee previously proposes the bill rejection, the chamber President puts it to the vote. A detailed debate follows and the individual provisions of the bills are considered.<sup>36</sup> Each member of the chamber has the right to submit written amendments and take part in the discussion. This may also relate to motions by the minority which were rejected by the committee. If the amendments submitted at the plenary session change the bill, the chamber President is entitled to return the bill to the committee for reconsideration. It is obliged to prepare a supplementary report.

When the debate on the bill concludes, the chamber President orders a vote on the enactment of the bill. Organic laws, as well as resolutions on the chamber procedural rules are passed by the majority of each chamber, while ordinary laws and other resolutions are passed by the majority of present members of each chamber.<sup>37</sup> A bill passed and signed by the chamber President is referred to the other chamber for consideration, provided that the Government is notified in advance.<sup>38</sup> If a bill is not reserved in the Constitution for the jurisdiction of a particular chamber, the decision of the other chamber is final.<sup>39</sup> If, on the other hand, the competent chamber adopts a bill compatible with its subject matter, it is finally adopted if the other chamber shows its consent. Otherwise, the bill is referred back to the first chamber for consideration. The latter must take the final decision on the provisions

<sup>33</sup> Brodziński W., *System konstytucyjny Rumunii*, Warszawa, 2006, 50.

<sup>34</sup> Article 98(1) of the *Regulamentul Senatului, aprobat prin Hotărârea Senatului*, 2005.

<sup>35</sup> *Ibid.*, Article 98(2).

<sup>36</sup> *Ibid.*, Article 101.

<sup>37</sup> Article 74 of the *Constitution of Romania*, 1991.

<sup>38</sup> Article 141 of the *Regulamentul Senatului, aprobat prin Hotărârea Senatului*, 2005.

<sup>39</sup> Article 75 of the *Constitution of Romania*, 1991.



in question as a matter of urgency. Afterwards, the law is forwarded to the Republic President, who promulgates it. It must be done within maximum of 20 days following the receipt of the law. However, prior to this process, the law may be submitted to the Constitutional Court with a request to examine its constitutionality. With regard to the second chamber, it can be requested by the Speaker of the Senate and at least 25 Senators. If the Constitutional Court rules on the constitutionality of a law, the Republic President promulgates it within ten days of receiving it.<sup>40</sup> Before the promulgation the Republic President may request reconsideration of an ordinary or limited law by the parliament. If it is re-enacted, the Republic President is obliged to promulgate it also within ten days of receiving the law. Subsequently, it is promulgated in the “Official Monitor of Romania” and afterwards, takes effect within three days after its publication.<sup>41</sup>

The chamber may also pass a law on its initiative or the motion of the Government as a matter of urgency.<sup>42</sup> Such a motion shall be approved at the next plenary session of the Senate. If it is passed, amendments to the bill are adopted within 48 hours, which may be submitted by the Government, members of the chamber or parliamentary clubs. At the same time, the Legislative Council should forward a report to the competent committee, which has to make a report within three days of receiving the bill.<sup>43</sup> The chamber President places the bill on the agenda of the next session. Opinions on the priority issue may be delivered by a Government official, chamber members, who submitted amendments to the bill during the committee’s work and representatives of parliamentary clubs. Following the debate conclusion, the chamber President orders a vote on the amendments having been acknowledged in the committee report. Finally, the chamber votes on the entire bill.<sup>44</sup>

<sup>40</sup> Article 77 of the Constitution of Romania, 1991; Brodziński W., *System konstytucyjny Rumunii*, Warszawa, 2006, 51; Dzemidok-Olszewska B., *System polityczny Rumunii*, in: *Systemy polityczne państw Europy Środkowej i Wschodniej*, edited by W. Sokół and M. Żmigrodzki, Lublin, 2005, 446; see also: Grabowska S., *Formy odpowiedzialności konstytucyjnej w Republice Rumunii*, in: *Formy odpowiedzialności konstytucyjnej w państwach europejskich*, edited by S. Grabowska and R. Grabowski, Toruń, 2010.

<sup>41</sup> Article 78 of the Constitution of Romania, 1991; Dzemidok-Olszewska B., *System polityczny Rumunii*, in: *Systemy polityczne państw Europy Środkowej i Wschodniej*, edited by W. Sokół and M. Żmigrodzki, Lublin, 2005, 445-446.

<sup>42</sup> Article 108 of the Rules of Procedure of the Senate of Romania.

<sup>43</sup> Article 110 of the Rules of Procedure of the Senate of Romania.

<sup>44</sup> *System konstytucyjny Rumunii*, Warszawa, 2006, 28.

## IV. Legislative practice in Czech Republic

At the very beginning of the consideration of the legislative function in Czech Republic, it is worth pointing out that the Czech Senate has a high legislative position, as it has the legislative initiative, but also, in case of the disbanding of the Chamber of Deputies, the right to enact decrees with the force of law autonomously.

In Czech Republic, the entire legislative process commences each time with the submission of a bill to the Chamber of Deputies, specifically, its President. The right to initiate legislation is held by a MP, group of MPs, Senate,<sup>45</sup> representation of the country (a higher-level local government body) and Government as well. Similarly to Poland, Czech senators are not granted any individual legislative initiative. Thus, it applies to the chamber as a whole. A Senate legislative initiative for the bill consideration in the Senate may be initiated by a Senator, group of Senators, Senate commission or committee. It is considered by the chamber in three readings. Once passed, the chamber authorises its President to refer the bill to the Chamber of Deputies.<sup>46</sup>

The Senate considers a legislative initiative in three readings. The first reading begins with the proposal presentation by the rapporteur. After the debate it is referred to the committee for consideration. The relevant committee has 60 days to consider it, but the period may be extended or shortened to 30 days.<sup>47</sup> When the bill is considered in two readings, it may submit a motion to approve, cancel, amend or adjourn the bill.<sup>48</sup>

The second chamber may pass a bill with the presence of at least 1/3 of all Senators, with a majority of at least half of the statutory number of Senators, unless the Constitution defines otherwise. An exception applies to constitutional laws, for the enactment of which the consent of 3/5 of the Senators and the same required presence is required.

<sup>45</sup> The so-called Senate Bill, § 127 of the Act of Czech Republic of 11 May 1999 on the Rules of Procedure of the Senate, 1999; Linek L., Mansfeldova Z., *The Parliament of the Czech Republic, 1993-2004*, *The Journal of Legislative Studies*, No. 13, 2007, 13; Boháč R., *Legislativní proces (teorie a praxe)*, Praha, 2011, 98-102.

<sup>46</sup> Jirášková V., Skotnicki K., *Parlament Republiki Czeskiej*, Warszawa, 2009, 52-53; Sokół W., *System polityczny Czech*, in: *Systemy polityczne państw Europy Środkowej i Wschodniej*, edited by W. Sokół and M. Żmigrodzki, Lublin, 2005, 256; see more: Murár F., *Srovnání západoevropských regionálních druhých komor a alternativy regionalizace Senátu Parlamentu České republiky*, *Politologický časopis – Czech Journal of Political Science*, No. 3, 2013, 299-318; Zpěvek A., Zdeněk F., Jonáková T., *Základy teorie práva*, Praha, 2015, 110.

<sup>47</sup> § 128 of the Act of Czech Republic of 11 May 1999 on the Rules of Procedure of the Senate, 1999.

<sup>48</sup> *Ibid.*, § 129; Kysela J., *Dvoukomorové systémy*, Praha, 2004, 472-484.

The upper chamber has an opportunity to respond to a bill sent by the Chamber of Deputies. Firstly, it can put the bill on its agenda, consider it and adopt a resolution within 30 days since the bill was forwarded.<sup>49</sup> In the Polish order, if the chamber takes no action, the bill is deemed to be passed. On the other hand, if it is passed without amendments, the parliamentary legislative process is concluded. If it wants to expedite the whole procedure, it may pass a resolution assuring that it will not proceed with the bill, which results in the automatic enactment of the law.<sup>50</sup> Other options are to reject the bill or refer it to the Chamber of Deputies with amendments.<sup>51</sup> In these two cases, the first chamber is obliged to reconsider the bill. In order to vote on the position of the second chamber, it requires the majority of votes of all the deputies. If the Senate returns a bill with amendments, the MPs first vote on the bill as passed by the second chamber. However, if this is not a case, a new vote is held on the text of the bill as passed by the Chamber of Deputies and then returned to the Senate. A bill is deemed to be enacted if the first chamber passes it by its absolute majority. No amendments can be submitted.<sup>52</sup> Afterwards, it is forwarded to the President of Czech Republic for being signed.<sup>53</sup>

The legislative process can also be shortened. This is the case when the fundamental rights and freedoms of citizens are at risk, their security is at risk, economic damage is at risk, or the vote on a bill to implement the UN Security Council decision on action to guarantee peace and national security cannot be adjourned. A state of legislative interim is then declared and if the Government requests the Parliament to consider the bill in the accelerated mode, the Chamber of Deputies has 72 hours to consider it, while the Senate has only 24 hours.<sup>54</sup>

At this point, the statutory provisions of the Senate should be noted. On the motion of the Government, when the Chamber of Deputies is disbanded, this chamber is entitled to issue statutory provisions that can be compared to the Polish decree-law. They concern matters that cannot be postponed. However, they cannot relate to the constitutional matters, closure of state accounts, state budget, electoral laws or con-

<sup>49</sup> Article 46(1) of the Ústava České Republiky, 1992.

<sup>50</sup> *Ibid.*, Article 48.

<sup>51</sup> *Ibid.*, Article 46(2) and (3); Jirásková V., Skotnicki K., *Parlament Republiki Czeskiej*, Warszawa, 2009, 54-56.

<sup>52</sup> Article 47 of the Constitution of the Czech Republic.

<sup>53</sup> Klíma K., *Constitutional law of the Czech Republic*, Plzen, 2008, 183-184.

<sup>54</sup> Sokół W., *System polityczny Czech*, in: *Systemy polityczne państw Europy Środkowej i Wschodniej*, edited by W. Sokół and M. Żmigrodzki, Lublin, 2005, 256-257.

sents for the ratification of international agreements. Such documents are signed by the President of the Senate, President of Czech Republic and its Prime Minister. They have the same legal effect as the laws do. However, to remain effective, they require statutory approval of the Chamber of Deputies at its first meeting. Otherwise, the provisions become null and void.<sup>55</sup>

## V. Conclusion

Undoubtedly, bicameral parliaments receive much criticism. While in the constitutional order the lower chamber is obligatory, the upper chamber represents an appendix. Without it, the parliament can fulfil its functions as shown by the actions of the unicameral orders. Taking into account the principle of “checks and balances,” the bicameral order becomes the rule for the existence of liberal constitutionalism. The condition, however, is a proper institutional balance, represented by the distributed competences between the two chambers. Summing up the research on the legal solutions in Poland, Czech Republic and Romania, a conclusion on the differentiated approach to the systemic role of the second chambers emerges.

In Poland, the concept of parliament adopted systemically provides the Sejm with a dominant position. In the context of legislative matters, the position of the Senate is of no significance as it can be outvoted. We see a different situation only in case of amending the Constitution, as the Senate’s consent is required for adopting such a law. On the other hand, in Czech Republic we observe a slightly stronger legislative role of the second chamber. Admittedly, a proposed amendment to a bill (not a law) can only be challenged by the Chamber of Deputies if the first chamber adopts it again in the wording that was submitted to the second chamber. Moreover, in case of certain laws, it is required to obtain the consent of both parliamentary chambers. The Czech legal solutions show a strengthened position of the Senate and the distinction of its political image.

It should be noted that Romania’s legal system, which represents a model of balanced bicameralism, allows both parliamentary chambers to legislate to the same extent. It imposes the same tasks on both parliamentary chambers, as the legislative process can commence in either chamber. Besides, the process is carried out in the same way. It leads to equally divided competences and certain elevation of the second

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<sup>55</sup> Article 33 of the Constitution of the Czech Republic; Gdulewicz E., *Republika Czeska, Ustroje państw współczesnych*, edited by E. Gdulewicz, Warszawa, 2002, 101.

chamber in terms of its competences, or even the prestige and importance of the chamber in respect of state power.

We suppose that in Poland it is important to distinguish the possibility of the Senate membership from the Sejm. In the Senate it is possible for people with a high social position to be members of the chamber; namely, university employees, recognized authorities, those holding various professions. On the other hand, as in federal states, representatives of administrative and territorial units and local public administration authorities could become members. This change can have a positive impact on law-making, as there would be no political game in the legislative process and these representatives can bring a lot of substance and knowledge.

Lastly, it should be noted that currently, in Poland, depending on the political force constituting the majority of the Sejm and the Senate, the second chamber represents a place of prolonged proceedings of bills, because even if the Senate contradicts the bill, the Sejm can pass it. If the second parliamentary chamber is to engage in the legislative process, systemic changes must be similar to the system of Romania or Czech Republic. This power is strengthened there.

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