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Polish and Czech bicameralism: past and present

1

During a conference devoted to an attempt to take a cross-sectional view of Polish and Czech political science, consideration of the legislature and its focus on the problem of parliamentary structure cannot be lacking, which does not need to be justified. It is also understandable that the analysis cannot be limited only to the last years and the state independence of the Czech Republic, but it is necessary to reach back to the period of rebirth and formation of Polish and Czechoslovak statehood during and immediately after the First World War, and especially to the first constitutions of these countries. Those times and the constitutional solutions adopted at that time influence, albeit to varying degrees in particular areas, the contemporary constructions. In both countries, the importance of that past is emphasized, and there is even talk of the continuation and development of legal regulations initiated earlier¹.

The purpose of the study is to analyse the bicameralism of the Polish and Czechoslovak and Czech parliaments. Considerations will be devoted to both

¹ The best example of such deliberations can be found in the Czech Republic in the international conference 'Ústavní kontinuita České republiky s československou tradicí' held in Prague on 10-11 May 2018 on the occasion of the 100th anniversary of the founding of Czechoslovakia, which resulted in a book with the same title edited by Aleš Gerloch and Katarzyna Žák Krzyžankova (Plzeň 2018), and in Poland in the conference 'The Constitution of the Republic of 17 March 1921. Reflections on the 100th Anniversary of the Constitution's Enactment', held in Łódź on 22 March 2021, which resulted in the book *The Constitution of the Republic of Poland of 17 March 1921. On the centenary of its enactment*, edited by Aldona Domańska and Anna Michalak (Łódź 2022). See also A. Gerloch, J. Hřebejk, V. Zoubek, *Ústavní systém České republiky*, 6. Aktualizowane wydání, Plzeň 2022, p. 147.

general issues and some more specific ones in the perspective of transformations over more than a century. The evolution and, above all, the similarities and differences in the constitutional solutions adopted will be shown. This is to allow an answer to the question of whether, in the case of the bicameral structure of parliaments in Poland and Czechoslovakia and the Czech Republic, there was and is only an identity of the number of chambers or a greater closeness or diversity of structures.

2

Poland and Czechoslovakia, reborn after World War I, adopted a republican form of government. Although their first parliaments - the Legislative Sejm and the National Assembly, respectively - which were to shape the future system of these countries were unicameral, the question of the structure of future parliaments became one of the more controversial issues in the work on the constitutions. The period of constitutional provisionalism ended very quickly in Czechoslovakia, as the Constitution of the Czechoslovak Republic was passed (unanimously) as early as 29 February 1920². In Poland, it took much longer - the Constitution of the Republic of Poland was not enacted until 17 March 1921³. One may wonder to what extent they referred to their own democratic traditions (including constitutional traditions in Poland) and to what extent they referred to the best constitutional models of European countries, especially France, and the United States, but this is not the subject of evaluation of this study. The constitutions laid the foundations of a liberal-democratic state, in which supreme power belonged to the people, the system of state bodies was built on the principle of a tri-partite government and a parliamentary system of government, and a broad catalogue of civil rights was established.

Legislature in both countries was vested in bicameral parliaments called the National Assembly. Bicameralism was close to the Polish political tradition (it functioned in both the Duchy of Warsaw and the Kingdom of Poland)⁴. In Czechoslovakia, on the other hand, it was seen as a solution to influence a high level of law-making⁵. In Poland, the National Assembly consisted of the Sejm (tradi-

² Zákon ze dne 29. února 1920 kterým se uvozuje Ústavní listina Československé republiky (Sbírka zákonů a nařízení státu československého, č. 121/1920). A translation of this constitution is included in the collection: *Nowe konstytucje*, przełożone pod kierunkiem J. Makowskiego, Warszawa 1925, pp. 271-316.

³ Journal of Laws of the Republic of Poland No. 44, item 267 as amended.

⁴ B. Modzelewski, *Współczesny bikameralizm – czyli kształt i sens istnienia dwuizbowego modelu parlamentu*, „Acta Erasmiiana” 2019, vol. XVIII, p. 220.

⁵ M. Maksymiuk, M. Karlikowski, *Senat dwudziestolecia międzywojennego w Rzeczypospolitej Polskiej i Czechosłowacji*, „Przegląd Prawa Konstytucyjnego” 2021 No. 1, p. 379 and the literature cited therein.

tionally often referred to as the Chamber of Deputies)⁶ and the Senate. The Sejm consisted of 444 deputies, while the Senate consisted of 111 senators. In contrast, the National Assembly in Czechoslovakia was made up of a Chamber of Deputies consisting of 300 members and a Senate with 150 senators. Comparing the two parliaments, one can point out many similarities, but also a number of important differences.

Elections to both chambers in both countries were five-point (universal, direct, equal, secret and proportional), which was considered at the time a sign of progress and democratization of the system. In elections to the Sejm and the Chamber of Deputies, citizens who had reached the age of 21 had the active right to vote, while citizens who had reached the age of 30 had the passive right to vote. The age census, however, was different for Senate elections. In Poland, citizens who had reached the age of 30 could vote, while citizens who had reached the age of 40 could stand for election, while in Czechoslovakia this age limit was 26 and 45 respectively, which in the latter case was considered an excessive requirement and making the chamber a "storehouse" for pensioners⁷.

While the Polish Constitution of 1921 explicitly stated that deputies and senators are representatives of the people, the Czechoslovak Constitution of 1920 did not state this *expressis verbis*, which even led some authors to conclude that the representative of the people is the entire chamber and not individual deputies or senators⁸. The mandate of deputies and senators in both countries was a free mandate. Parliamentarians had immunity, and the number of positions and functions that one could not hold while being an MP or senator was also extensive.

However, the term of office of the chambers differed. In Poland, the terms of office of the Sejm and Senate lasted 5 years and began and ended simultaneously, while the Chamber of Deputies in Czechoslovakia was elected for 6 years and the Senate for 8 years; the different lengths of the chambers' terms can be significant in political practice⁹. In Poland, at the same time, it was possible for the Sejm to dissolve itself by a $\frac{2}{3}$ majority vote with half of the statutory number of deputies present, as well as for the Sejm to be dissolved by the President of Poland with the consent of $\frac{3}{5}$ of the statutory number of deputies, which in both cases also ended the term of the Senate. In Czechoslovakia, the chambers did not have the option of self-dissolution, but could be dissolved by the President. The so-called August Amendment, a law of 2 August 1926, amending and supplementing the Constitution of the Republic of Poland of 17 March 1921, granted the President the right to dissolve before the expiration of the term of the Sejm and the Senate at the request of the government.

⁶ M. Kruk, *100 lat państwa czechosłowackiej i polskiej. Podobieństwa i różnice*, „Krytyka Prawa” 2019 vol. XI, No. 1, p. 185.

⁷ M. Maksymiuk, M. Karlikowski, op. cit., p. 380.

⁸ M. Starzewski, *Konstytucja Republiki Czechosłowackiej*, Kraków 1926, p. 66.

⁹ M. Kruk, op. cit., p. 196.

The Sejm, the Chamber of Deputies and both Senates worked by the session system. The convening of sessions belonged to the Presidents, and in the case of ordinary sessions (two per year) they were severely limited in this by indicating when it should take place. There was also the possibility for the Presidents to convene extraordinary sessions, which they could do on their own initiative or at the request of a certain number of deputies or senators: in Poland, $\frac{1}{3}$ of the total number of deputies or senators, while in Czechoslovakia, an absolute number of deputies or senators, and if 4 months had passed since the close of the last session, even only $\frac{2}{5}$ of the members of either chamber. Presidents could also adjourn sessions.

In Poland, the August amendment reduced the budgetary powers of the Sejm and the Senate by imposing deadlines on them to pass it, as otherwise the President promulgated the draft budget as a law. The Sejm could rescind decrees with the force of law from the President, and the Sejm's powers over a vote of no confidence in the government were reduced.

The April Constitution established a system in Poland in which the state was superior to the citizens. It broke with the principle of the sovereignty of the nation and the separation of powers, entrusting it to a President answerable only to God and history. While it maintained the bicameralism of parliament, it remained (as did the government, the armed forces, the courts and state control) under the authority of the President. The role of parliament was generally reduced, even secondary¹⁰.

The Sejm consisted of 208 deputies elected in 104 electoral districts. Polish citizens who enjoyed full civil and civic rights could elect and stand for election, with the age limit for active suffrage raised to 24 while for passive suffrage it was still 30. The Senate, on the other hand, consisted of 96 senators, one-third of whom were appointed by the President, while two-thirds came from indirect elections, in which only citizens at least 30 years of age who, in addition, possessed at least one of three titles: merit, education or civic trust; the first was determined by possession of certain state decorations, the second by possession of higher or secondary vocational education or an officer's rank, and the third by being a local government or social activist. A candidate for the Senate still had to be at least 40 years old.

The terms of office for the Sejm and Senate were still five years.

It was up to the President to convene and dissolve the Sejm and Senate at the expiration of their terms, and to order the opening, adjournment and closing of their sessions.

The primary function of the Sejm and Senate continued to be legislation. However, the role of the Sejm was severely reduced. It was made clear that the

¹⁰ M. Bankowicz, *Transformacje konstytucyjnych systemów władzy państwowej w Europie Środkowej*, Kraków 2010, p. 130.

function of governing no longer belonged to it (Article 31(3)), and its position vis-à-vis the Senate was also significantly weakened. The second chamber considered bills and the state budget, and could also table amendments to them, for the rejection of which a $\frac{3}{5}$ majority vote was required in the Sejm. At the same time, the Sejm and Senate could not pass amendments to the Constitution in defiance of the President. The Sejm's ability to control the government was also significantly restricted.

3

After World War II in Poland as in Czechoslovakia, the bicameralism of the parliaments of these countries was abolished. In Poland, a popular referendum even took place on 30 June 1946, the first question of which was: "Are you in favour of abolishing the Senate." According to official figures, 68% of voters answered this question in the affirmative. However, this result was falsified. Surveys conducted after 1989 showed that there were only 26.9% positive answers¹¹. The Senate was therefore not provided for in the Constitution of 22 July 1952, while the Sejm formally became the highest authority of the state. In Czechoslovakia, the move away from bicameralism was evident from the very beginning of the post-war transition, a notable departure from the patterns of the First Republic¹². After the 20-25 February 1948 coup d'état, Czechoslovakia became an outright member state of the Soviet bloc. Despite this, the Constitution of 9 May 1948 - on the one hand referred to the 1920 solutions, but also contained new elements. Thus, it was a hybrid solution that combined the content characteristic of parliamentary democracy with the solutions of the so-called people's democracy¹³. However, the political system practice, as in Poland, was obviously quite different - characteristic of socialist countries: the communist party played a dominant role and the Constitution was treated instrumentally¹⁴.

The deepening of the new system took place in Czechoslovakia in the Constitution of 11 July 1960. All power was given to the working people. In the case of the system of bodies of state, the principle of tripartition was abandoned in favour of sole authority. From a formal point of view, there was even a strengthening of the power of the National Assembly, but the government was still appointed by the President.

¹¹ A. Paczkowski, *Referendum z 30 czerwca 1946. Przebieg i wyniki. Dokumenty do dziejów PRL*, „Studia Polityczne PAN” 1993, coll. 4, p. 159.

¹² M. Bankowicz, op. cit., p. 60.

¹³ M. Kruk, *Ustrój polityczny Czechosłowackiej Republiki Socjalistycznej*, Warszawa 1976, pp. 33-34.

¹⁴ M. Bankowicz, op. cit., p. 68.

A profound political transformation took place in Czechoslovakia in 1968 after the so-called Prague Spring and the entry of Warsaw Pact countries' troops. The state was transformed from a unitary state to a federal one on 1 January 1969. The legal basis was the Constitutional Law on Czechoslovak Federation of 27 October 1968. It established a bicameral Federal Assembly, which consisted of: The House of the People and the House of Nations. The House of the People consisted of 200 deputies elected nationwide in single-mandate electoral districts, while the House of Nations consisted of 150 deputies elected 75 each in the Czech Republic and Slovakia also in single-mandate electoral districts. The terms of both chambers lasted five years and ended simultaneously.

The Federal Assembly worked by the session system. Ordinary sessions were convened and closed by the President, and if he failed to do so, the Presidium of the National Assembly did so. At the request of at least $\frac{1}{3}$ of the deputies of either chamber, there was an obligation to convene an extraordinary session. As a rule, the chambers sat separately. Joint sessions were held for the election of the President, the President and Deputy Presidents of the Federal Assembly, the consideration of the program statement of the government; as a result of a decision of the two chambers, they could also sit together on other matters.

The Constitution, in Article 36, established an extensive catalogue of matters belonging to the National Assembly. These were: 1) enacting the Constitution, constitutional laws and statutes, and controlling their implementation¹⁵, 2) considering fundamental issues of foreign and domestic policy, 3) enacting multi-year plans for economic development and the state budget, and controlling their implementation, and enacting the closing of the state accounts of the federation; 4) electing the President and considering his proposals; 5) considering program declarations of the government, controlling the activities of the government and its members, and considering motions for a vote of confidence in the government; 6) electing and dismissing members of the Constitutional Court; 7) creating federal ministries by constitutional laws and laws of other federal state administrative bodies; 8) the right to declare war in the event of an attack on the CSR or the need to fulfil international agreements obliging joint defence against an attack, 9) to consent to the ratification of international political and economic agreements of a general nature and international agreements for the implementation of which a law of the Federal Assembly is needed, 10) to repeal government regulations and resolutions or generally applicable laws of a federal ministry or other federal central state administrative body in the event that they conflict with the Constitution or another law of the Federal Assembly.

¹⁵ The Federal Assembly could only exercise legislative functions with regard to matters delegated by the Constitutions to the exclusive competence of the CSRS and matters falling within the joint competence of the CSRS and the republics.

Both chambers of the Federal Assembly had the same rights, the federal system of the state, however, affected the specific way in which the Federal Assembly passed resolutions. This is because the so-called "no-majority rule" applied, and both groups of deputies in the House of Nations had to be in favour of a resolution. The House of the People could pass resolutions in the presence of more than half of its members, while the House of Nations if more than half of its elected members in the Czech Republic and Slovakia were present. Adoption of a resolution required the consent of more than half of the members present in each chamber, except for the adoption of the Constitution, the Constitutional Law and their amendments, the election of the President and the passage of a resolution declaring war, when the consent of $\frac{3}{5}$ of all members of the House of the People was required, as well as $\frac{3}{5}$ of all members of the House of Nations elected in the Czech Socialist Republic and $\frac{3}{5}$ of all members elected in the Slovak Socialist Republic. Each chamber had to pass a resolution on the motion adopted by the other chamber within three months at the latest. If such a resolution did not occur within this timeframe, the motion was considered adopted. In the event of a disagreement between the chambers, it was envisaged that a conciliation procedure would be launched.

Introducing the Czechoslovak bicameral Federal Assembly, it is also necessary to mention a very original solution, which was the Presidium of the Federal Assembly, which acted as the governing body. It consisted of 40 members, 20 of whom were elected by the House of the People and 20 by the House of Nations, with the House of Nations having to elect 10 members from among deputies coming from the Czech Socialist Republic and 10 members from among deputies representing the Slovak Socialist Republic. This was a body with significant powers. If the Federal Assembly was not in session due to the end of a session or term of office, it assumed the powers of the Assembly with the exception of electing the President, passing the budget, declaring war and expressing a vote of no confidence in the government or its members. However, if the Federal Assembly was not in session for emergency reasons, the powers of the Presidium were even greater, as it assumed all powers except the right to amend the Constitution and elect the President. In matters of urgency, it could issue decrees with the force of law, which, like all other decisions, required approval at the next session of the Federal Assembly, otherwise they became null and void by operation of law.

The structure of the Federal Assembly as presented existed until the end of the Czechoslovak Socialist Republic, that is, until the end of 1992.

4

The new period in the bicameralism of parliaments in Poland and the Czech Republic is related to the political changes in these countries, and in the Czech

Republic also in connection with the breakup of the Czechoslovak federation and the gaining of independence on 1 January 1993. However, the reasons for its establishment are different.

In Poland, the reinstatement of the Senate was decided during the so-called round table. The proposal, surprisingly, was made by the party-government side. The *Agreements* adopted on 5 April 1989, stipulated:

The Sejm remains the supreme body of the legislature. It will sit continuously, and the presence of opposition deputies will change the way it operates. An important strengthening of the legislature will be the new institution of the Senate. The Senate will have a legislative initiative and will consider laws passed by the Sejm, and if it objects to a bill, it will require a two-thirds majority to be passed by the Sejm. [...] The Senate will participate with the Sejm in amending and enacting the Constitution. The Senate, elected by the will of the sovereign people, will exercise significant control in particular over human rights and the rule of law, as well as social and economic life¹⁶.

The Senate was to come from free elections, which was a concession to the "solidarity-opposition" side. The second chamber was treated instrumentally. Although elements of political pluralism were thus introduced, in essence the row was over the inclusion of the opposition in official political life in the state, thereby shifting at least part of the responsibility for the dire economic situation in the country to it and facilitating the adoption of the necessary reform program¹⁷. However, the arrangements made were already abandoned with the enactment of the constitutional law of 7 April 1989, amending the Constitution of the People's Republic of Poland (the so-called April amendment). At that time, the Senate was deprived of its control function, and it also wanted to take away its right to consent to the appointment of the Ombudsman and the President of the Supreme Audit Office¹⁸.

As can be seen, the concept of bicameralism was very deliberate at the time. It included the opposition in the process of governing and responsibility for the state, but left the final decisions in the hands of the party-government side, since 65% of the seats in the (so-called "contract") Sejm were guaranteed for its representatives, while only 35% of the seats were to come from free elections¹⁹.

In the Czech Republic, the issue of a bicameral parliament was one of the most contentious during the work on the constitution of the emerging independent state. Opponents of the creation of the Senate were the Left wing, which believed that it made no sense in a unitary state and would only compli-

¹⁶ *Porozumienia „okrągłego stołu”*, Warszawa 1989, p. 7.

¹⁷ L. Garlicki, *Uwaga 8 do Rozdziału IV „Sejm i Senat”*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I. ed. L. Garlicki, Warszawa 2009.

¹⁸ P. Sarnecki, *Czy w Polsce istnieje konstytucyjna zasada dwuizbowości parlamentu?*, „Przegląd Sejmowy” 1993, No. 2, p. 47.

¹⁹ M. Kudej, *Kompetencje Senatu w świetle reformy konstytucyjnej z kwietnia 1989 r.*, „Państwo i Prawo” 1990, No. 2, p. 18.

cate the process of making laws. However, it did not play an important role on the political scene at the time, while the other political parties saw the second chamber as a stabilizing factor and a guarantee of the continuation of the legislature, since it would not be possible to dissolve it²⁰.

It seems difficult to determine unequivocally what determined the adoption of bicameralism of parliament in the Czech Republic. In my opinion, three reasons can be identified: reference to the traditions and solutions of interwar Czechoslovakia, ensuring political participation of Czech deputies elected to the Federal Assembly, modelling on the solutions adopted in other post-socialist countries²¹.

In Poland, it was assumed that the Senate would consist of 100 senators. This was a rather random number that bore little relation to the then 49 provinces²². In the Czech Republic, on the other hand, it consists of 81 senators, which, on the one hand, is due to the renewability of $\frac{1}{3}$ of its composition every 2 years, and on the other hand, is related to the number of counties that were to become the basis for the creation of electoral districts²³.

The term of office of the Senates in the two countries is different. In Poland, it is traditionally elected for 4 years, but its functioning is entirely subordinated to the term of the Sejm; it begins on the day the Sejm convenes for its first session and lasts until the end of the term of the first chamber. In the Czech Republic, on the other hand, we are dealing with a six-year term of senators and not a body that cannot be dissolved; however, due to the renewal of $\frac{1}{3}$ of its membership every 2 years, one can only speak of the so-called functional term of the Senate.

Both chambers of the parliaments of the two countries are elected by citizens of each country who turn 18 years old on the voting day at the latest (since elections in the Czech Republic are two-day, the completion of this age can also take place on the second day of the election) and meet other conditions. However, the age limit for the passive electoral right is different. In Poland, it is 21 for the Sejm and 30 for the Senate (originally it was also only 21), while in the Czech Republic a candidate for the Chamber of Deputies must be 21, and for the Senate as old as 40 (which can be completed only on the second day of voting).

Elections to all chambers in both countries are: universal, direct and held by secret ballot. Elections to the first chambers are also equal, and one can similarly speak of the principle of equality of elections to the Senate in the Czech Republic. In Poland, the constitution omits the principle of equality, which is due to the fact that at the time of its enactment, elections to the Senate were indeed not

²⁰ M. Bankowicz, *System władzy państwowej Czechosłowacji i Czech*, Kraków 1998, p. 142; V. Jiráskova, K. Skotnicki, *Parlament Republiki Czeskiej*, Warszawa 2009, p. 16.

²¹ K. Skotnicki, *Senat Rzeczypospolitej Polskiej i Senat Republiki Czeskiej. Analiza porównawczo-prawna*, „Acta Universitatis Lodziensis. Folia Iuridica” 2009, No. 70, p. 107-108; idem, *Senat Republiki Czeskiej*, „Przegląd Europejski” 2018, No.2, p. 161.

²² L. Garlicki, *Uwaga 9 do art. 97*, [in:] *Konsytucja...*

²³ K. Klíma a kol., *Komentář k Ústavě a Listině*, Plzeň 2005, p. 142.

equal. Elections to the first chambers (the Sejm and the Chamber of Deputies) are, by the same token, proportional, with, of course, a different number of electoral districts and the number of deputies elected in them, and an electoral system in the narrow sense. Elections to the second chambers (Senates), on the other hand, are universal, always by majority vote. In Poland, at the same time, the number of seats to be filled in an electoral district has varied. Initially it ranged from 2 to 4, while now elections are held in single-mandate districts. In the Czech Republic, in connection with the necessity of electing $\frac{1}{3}$ of senators every 2 years, there was a dispute over whether to create single-mandate or three-mandate districts; eventually the first solution prevailed, and it was determined in which districts in 1996 senators would be elected for 2 years and in which for 4 years. The difference between senatorial elections, however, is that in Poland the election ends in one round and the seat is won by the candidate with the most votes, while in the Czech Republic if no candidate wins the absolute number of votes on the 13th day after the end of the first round, a second round of voting takes place, in which the two candidates with the most support from the first vote compete for the seat, and the seat is won by the one with the most votes, and in the event of a tie the seat is decided by draw.

Both chambers of the Czech and Polish parliaments work permanently. A Czech peculiarity, however, is that either chamber can pass a resolution to adjourn (suspend) the session, which cannot, however, last longer than 120 days per year, but this does not apply to the Senate when the Chamber of Deputies is dissolved; the Senate then has the "right to pass decrees with the force of law on matters that cannot be adjourned and require normalization by law" (Article 33(1) of the Constitution). In contrast, there are no inter-term breaks in Poland.

Czech and Polish bicameralism are asymmetrical, which is due to the competencies of the chambers, as the first chambers - the Chamber of Deputies and the Sejm - have more, and it is often up to them to make the final decision. This is particularly evident in the case of law-making. It should also be remembered that during the development of the Constitution of the Czech Republic there was a proposal that the Senate should participate in the enactment of only certain laws - codes and laws related to decentralization²⁴.

In both parliaments, the legislative path always begins in the First Chamber. An important difference here is that while deputies - in the Czech Republic as few as one, and in Poland groups of at least fifteen - can initiate legislation, such a right in both countries is not possessed by senators or groups of senators, but by the Senates, which must pass a relevant resolution. The course of further work in the first chambers is similar, and internal auxiliary bodies - committees and commissions - play an important role. The Chamber of Deputies passes a resolution by an absolute majority of votes in the presence of at least one-

²⁴ J. Syllová, *Komora minimalnych funkcí, nebo komora „odlišného ohledu“?*, [in:] *Dvacet let Senátu Parlamentu České republiky v souvislostech*, ed. J. Kysela, Praha 2016, pp. 55-57.

third of its members, while the Sejm passes by a majority of votes in the presence of at least half of the statutory number of deputies.

In the case of bicameralism, the role of the second chamber in making laws is always particularly important. According to the Constitution of the Czech Republic, after the completion of work in the Chamber of Deputies, a bill passed by it is forwarded to the Senate, while the Polish Constitution stipulates that a bill passed by the Sejm is forwarded to the Senate²⁵.

The senates of both countries have 30 days to work at their stage of the legislative process. During this time they can pass the bill, table amendments to it or reject it. If amendments are passed or the (bill) is rejected, it returns to the First Chamber. In Poland, the Sejm rejects such a resolution of the Senate by an absolute majority of votes in the presence of at least half of the statutory number of deputies. In the Czech Republic, by contrast, the proceedings in the Chamber of Deputies depend on what the Senate has passed. If it has rejected the bill, the law is passed if the Chamber of Deputies passes it by an absolute majority of its members. If, on the other hand, the Senate has tabled amendments, a vote is held first on the version proposed by the other chamber. If it fails to pass, the bill forwarded to the Senate is voted on and the law is passed by an absolute majority of the statutory number of deputies. This means that if the Chamber of Deputies fails to pass the bill in the version proposed by the Senate, as well as failing to pass it again by the required majority, the bill is not passed (falls)²⁶.

The Senate's failure to take a position on the (bill) within 30 days results, in both states, in its being deemed enacted as passed by the first chamber.

Only in a few cases is the position of the two chambers in law-making the same. In Poland, this is the case of a law giving consent to the ratification of an international agreement delegating to an international organization or international body the powers of state authorities in certain matters. We face a similar situation in the Czech Republic. In the Czech Republic, the position of the two chambers is also equalized in the case of the adoption of electoral laws and the law on the rules of deliberation and mutual contacts between the two chambers.

A peculiarity of Czech bicameralism is that the Senate does not participate in the passing of the law on the state budget and the law related to the closing of the state account, which is due to the fact that the chamber is not assigned a control function²⁷.

²⁵ It is a separate very interesting issue whether a bill still goes to the Senate because the legislative path is not yet complete or a law because the First Chamber has already finished its work on it. I am closer to the first of these views, a broader consideration of these issues is, however, beyond the scope of this paper. See more extensively K. Skotnicki, *Senat Republiki Czeskiej i Senat...*, op. cit. p. 114.

²⁶ E. Gdulewicz, *Republika Czeska*, [in:] *Ustroje państw współczesnych*, vol. 2, ed. E. Gdulewicz, Lublin 2002, p. 83.

²⁷ R. Suchánek, V. Jirásková et al, *Ústava České republiky v praxi. 15 let platnosti základního zákona*, Praha 2009, p. 123.

Finally, the question of the participation of each chamber of parliament in the procedure related to amending the Constitution, and in the Czech Republic also the enactment of constitutional laws, is very specific.

The Senate in Poland can (in addition to a group of $\frac{1}{5}$ of the statutory number of deputies and the President) initiate an amendment to the Constitution. However, the content of the amendment is decided exclusively by the Sejm, which passes it by a $\frac{2}{3}$ majority in the presence of at least half of the statutory number of deputies. The Senate does not have the right to propose amendments to such a law, it can only pass such a law by an absolute majority in the presence of at least half of the statutory number of senators. If this does not happen, the bill falls, as the First Chamber has no right to break the Senate's position. The second chamber can also request a referendum approving a constitutional amendment if the amendment concerns the content of Chapters I, II and XII of the Constitution.

In the Czech Republic, by contrast, the issue is more complex. The Senate has the right to initiate any amendments to acts of constitutional rank. The Chamber of Deputies decides on the content of such an act. The laconic nature of the Constitutional regulation and the lack of a law, provided for in Article 40 of the Constitution, on the rules of deliberation and mutual contacts between the two chambers makes it seem debatable that the Senate has the right to propose amendments to such a law²⁸; however, practice has moved in this direction and the amendments are then considered by the Chamber of Deputies²⁹. What is surprising, however, are the majorities needed to pass such laws in each chamber. In the Chamber of Deputies, a $\frac{3}{5}$ majority of all deputies is required, while in the Senate, a $\frac{3}{5}$ majority is also required, but with at least $\frac{1}{3}$ of the chamber's members present.

A very original solution in the Czech Republic is the possibility for the Senate to issue statutory provisions (equivalent to Polish ordinances with the force of law). They can be issued while the Chamber of Deputies is dissolved and only at the request of the government and must be approved at the first session of the Chamber of Deputies, otherwise they lose legal force. This is a design that harkens back to earlier arrangements, when this power belonged to the Presidium of the National Assembly and later to the Presidium of the Federal Assembly³⁰. However, constitutional matter, the state budget, the closure of state accounts, election laws and international agreements on human rights and fundamental freedoms cannot be regulated by these acts.

²⁸ J. Kysela, *Senát Parlamentu České republiky v historickém a mezinárodním kontextu. Příspěvek ke studiu dvukomorových soustav*, Praha 2000, p. 130; K. Klíma a kol., *Komentář k Ústavě a Listině*, Plzeň 2005, p. 209.

²⁹ R. Suchánek, V. Jirásková et al., op. cit., p. 146.

³⁰ V. Pavlíček, J. Hřebejk, *Ústava a ústavní řád České republiky. Komentář*, 1. díl, *Ústavní systém*, Praha 1998, p. 163.

A very important function of parliament is creation.

Bicameralism in the case of the parliament's creative function should be analysed, on the one hand, due to the joint participation of both chambers in the staffing of other bodies, as well as independent election to specific positions. An analysis of the solutions in both countries shows that the Polish parliament, including the Senate, is much more competent in this case, but it is entirely accurate to say that this is not due to a clear vision of the second chamber, but is a consequence of its "competence appetites", as well as the very fact of its existence, which is thus more strongly justified³¹. In both countries, also in the case of this function, there is an asymmetry in the position of the ozb, and by far the greater role is played by the first chambers, which, above all, is the only one that exerts influence on the formation of the government.

The analysis should begin with a reminder that at the beginning of the political transition, members of both chambers participated in the election of their countries' presidents. In Poland, however, this was very short-lived, and the first general election of a president took place as early as 1990, while in the Czech Republic it only happened in 2013.

In Poland, the second chamber, once elected by the Sejm, approves the appointment of the Ombudsman, as well as the appointment and dismissal of the President of the Supreme Chamber of Control, the Ombudsman for Children, the President of the Office for Personal Data Protection, the President of the Office of Electronic Communications, the President of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation. Practice shows that if the parliamentary opposition holds a majority in the Senate, this can effectively block the filling of the office, as was the case with repeated attempts to appoint the Ombudsman.

However, by far the predominant situation is one in which the chambers perform the creative function independently. First of all, only the Sejm elects judges of the Constitutional Tribunal and the State Tribunal, as well as (at the request of the President) the President of the National Bank of Poland. Separately, the chambers elect members of the Monetary Policy Council, the National Broadcasting Council, and the Collegium of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation. In contrast, only the Senate elects Supreme Court jurors.

In the Czech Republic, the Chamber of Deputies requests the President to appoint the President and Vice President of the Supreme Audit Office, while the Senate in the Czech Republic approves the President's appointment of judges to the Constitutional Court, requests the President to appoint the Chairman and inspectors of the Privacy Office, and names one of two candidates for Public Defender of Rights (the other is named by the President), who is chosen by the Chamber of Deputies.

³¹ M. Dobrowolski, *Zasada dwuizbowości parlamentu w polskim prawie konstytucyjnym*, Warszawa 2003, p. 193 and the literature cited therein.

In doctrine, at least in Polish doctrine, there has been a dispute for years about the implementation by the chambers of parliament of the control function in relation to the Council of Ministers. The Constitution assigns it exclusively to the Sejm (a vote of confidence and a vote of no confidence), but the literature derives the right of the Senate to perform this role from the fact that it is a representative body³², and several specific competencies are also established in particular by the Law on the Exercise of the Mandate, as well as the Senate Regulations³³. However, this raises a legitimate question about the permissibility of granting the Second Chamber powers that have no basis in the function envisaged for it in the Constitution; however, this is not tantamount to prohibiting the statutory formulation of certain control powers of the Senate³⁴. Practice has also moved in this direction, such as the creation of various committees.

It should also be remembered that in Poland the Senate gives its consent to the President's ordering of a national referendum.

Finally, separate treatment should be given to the participation of deputies and senators in the work of the National Assembly, and in particular in the decision to hold the President constitutionally and criminally responsible. In the Czech Republic, this is the prerogative of the Senate alone.

Finally, when comparing the parliaments in Poland and the Czech Republic, it is important to point out the completely different role in terms of broadly understood state security. The competencies of the Parliament of the Czech Republic, as well as the Senate, are greater in this case than they are in Poland³⁵.

In light of the above, I do not share the view found in the Czech literature that the Senate of the Czech Republic was constructed as a counterbalance to the Chamber of Deputies³⁶.

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The analysis shows that in both Poland and Czechoslovakia, and later in the Czech Republic, legislators were very keen on the construction of a bicameral parliament.

³² P. Sarnecki, *Kompetencje kontrolne Senatu Rzeczypospolitej Polskiej*, „Przegląd Sejmowy” 2000, No. 6, pp. 9-27; M. Dobrowolski, *Zasada dwuizbowości parlamentu w polskim prawie konstytucyjnym*, Warszawa 2003, p. 271.

³³ P. Sarnecki, *Problem dwuizbowości parlamentu*, [in:] *Zagadnienia prawa parlamentarnego. Materiały z XLVIII Ogólnopolskiego Zjazdu Katedr i Zakładów Prawa Konstytucyjnego*, Serock 1-3 czerwca 2006 r., ed. M. Granat, Warszawa 2007, p. 173.

³⁴ L. Garlicki, *Kompetencje kontrolne Senatu? Uwagi na marginesie artykułu prof. Pawła Sarneckiego*, „Przegląd Sejmowy” 2000, No. 6, p. 34.

³⁵ I wrote more extensively about this in *Senat Rzeczypospolitej Polskiej i Senat Republiki Czeskiej...*, op. cit., pp. 119-120.

³⁶ A. Gerloch, J. Hřebek, V. Zoubek, op. cit., p. 152.

In Poland, this structure was adopted in both constitutions of the interwar period (of 1921 and 1935), it was also referred to at the beginning of the political transformation in the amendment of the Constitution of the People's Republic of Poland made on 7 April 1989, it was then maintained in the small constitution of 1992, and it also appears in the current Constitution of 1997. Thus, the unicameralism of parliament was encountered only during the period of the socialist state from the end of World War II to 1989.

In Czechoslovakia, the period of unicameral parliament was even shorter. Indeed, it did not exist under the 1920 Constitution, and, introduced after World War II in the socialist state, it was abolished on 1 January 1969 in connection with the change in the structure of the state and its transformation from a unitary to a federal one. The bicameral nature of the parliament was subsequently maintained in the 1992 Constitution of the Czech Republic.

An analysis of bicameralism in Poland and in Czechoslovakia and the Czech Republic, however, leads to the conclusion that only in the period of Czechoslovak federalism can it be said to have been fully thought through. It was constructed on the basis of a clear balance of chambers, and at the same time the construction of the Federal Assembly consisting of the House of the People and the House of Nations, while prohibiting majoritarianism in the work of the latter chamber, ensured the theoretical equality of the constituent entities of this federal state. Of course, I am leaving aside in this case the question of systemic practice, as we are all well aware that under the conditions of the socialist state, reality differed significantly from the normative regulation.

In other cases, however, the reaching for bicameralism was not the result of some well-considered vision of the state system. In the interwar period, there was a lot of haphazardness about it, with perhaps the exception of the Polish solution of 1935, while the return to this construction at the beginning of the political transition in both countries was an ad hoc step aimed at solving a specific problem. In Poland in 1989, it included part of the opposition in the co-governance of the state, which involved them assuming part of the responsibility for the state, but without having a decisive say. The maintenance of bicameralism of parliament in successive constitutional regulations takes place without due preceding discussion by politicians and theorists of law and political science. It exists by force of inertia, lack of clear vision, but also a certain convenience. In the Czech Republic, bicameralism of parliament solved the problem of former Czech deputies to the Federal Assembly, and we remember with what great problems the implementation of the Constitution and the creation of the second chamber occurred.

In the interwar period, both chambers of the analysed parliaments were elected by proportional representation, which was considered the only democratic way at the time; what was different was the number of completed years required to obtain the right to vote, with the number in Czechoslovakia being as

high as 45. I am leaving aside the specifics of the formation of the second chamber under the Polish Constitution of 1935, because at that time there was a completely different philosophy of the essence and functioning of the state. Nowadays we have a completely different situation - elections to the first chambers are proportional, while elections to the Senates are by majority in single-mandate districts (in Poland in the past by multi-mandate districts), while in Poland the entire Senate is elected at the same time, while in the Czech Republic a third of its members are elected every 2 years. Elections in Poland are made by simple majority, while in the Czech Republic by absolute majority (two rounds).

In Poland, both in the interwar period and now, the terms of office of the two chambers are linked to each other and last the same amount of time – 5 years in the past and 4 years now. The expiration of the term of the Sejm (whether in the normal term or following a self-dissolution or shortened term) by virtue of the Constitution ends the term of the Senate. In Czechoslovakia and now in the Czech Republic, on the other hand, the terms of office of the two chambers have never been equal, they are independent of each other, which is important because the different lengths of the chambers' terms in political practice can be significant³⁷. In the interwar period, the Chamber of Deputies was elected for 6 years, while the Senate was elected for 8 years. Nowadays, the terms are shorter – the Chamber of Deputies is elected for 4 years, while in the case of the Senate, due to the election of up to two-thirds of the members of that chamber, a term of 6 years applies to senators, while in the case of the Senate, two-year functional terms are said to apply. Extremely importantly, in the Czech Republic, there is no possibility of dissolving the Senate, whether another is instead the possibility of suspending the session.

Parliamentarians in the bicameral parliaments of Poland, Czechoslovakia and the current Czech Republic most often had a free mandate (although this was not always explicitly articulated in constitutional norms). It was different only under the Polish Constitution of 1935 and in the Czechoslovak Federal Assembly.

The parliaments of both countries analysed in the past worked by the session system, while now they work permanently, but in the Czech solution in both chambers there is the possibility to interrupt (suspend) their work.

The organization of all chambers is almost identical.

Bicameralism of parliament in a unitary state is seen as a solution in which the second chamber will restrain the omnipotence of the first chamber³⁸. However, opponents of bicameralism have argued that if the second chamber agrees with the first, it is superfluous, while if it has a different opinion and opposes the

³⁷ M. Kruk, op. cit., p. 196.

³⁸ R. Piotrowski, *Uwagi o roli dwuizbowości w ustroju demokratycznym*, [in:] *Parlament – tradycja, współczesność i kierunki zmian jego funkcji*, red. M. Berek, M. Chrzanowski, S. Patyra, Warszawa 2023, p. 9.

position of the first chamber, it is harmful³⁹. However, it is characteristic of the bicameralism of parliament in Poland, Czechoslovakia and the Czech Republic that the position of the chambers has never been and is not currently equal either. It is always an asymmetric bicameralism, in which the first chamber - the Polish Sejm and the Czechoslovak and Czechoslovakian Chamber of Deputies - is the dominant chamber, and the Senate does not play such an important role. The strengthening of the Senate's position at the expense of the Sejm hardly took place in Poland under the April Constitution. The dominance of the first chamber is clearly visible in the implementation of all functions of modern parliaments. It is up to the first chamber to decide on the final content of the laws passed, as it can reject the position of the second chamber. To it is clearly given the control function - for the government is responsible only to the first chamber, in the case of the Senate one can at most look for some control instruments. The first chamber also exerts a much greater influence on the filling of other positions in the state (the Senate of the Czech Republic is even much less important in this case than the Polish Senate), but these powers are rather incidental and one cannot always find any thought in them. A special power of the Senate of the Czech Republic, however, is the ability to enact statutory provisions (ordinances with the force of law) while the Chamber of Deputies is dissolved.

Equalization or approximation of the positions of the chambers is rare, e.g. in Poland it takes place when passing a law on amending the Constitution, but this influence is limited to the possibility of passing or rejecting this act, but without the possibility of influencing its content.

We can only speak of a greater equalization of the position of the chambers in the case of the European function. The Czech Senate also plays a more important role in matters related to state security.

The lack of equivalence of the chambers of the parliaments of Poland, Czechoslovakia and the Czech Republic consequently makes it unnecessary to create "intermediary" structures between them, such as joint or mediation committees⁴⁰.

The existing dualism of parliament in the Czech Republic and Poland is - at least by some representatives of Polish doctrine, but also politicians - criticized. It is pointed out that the asymmetry of powers of the chambers is not conducive to the proper functioning of parliament. For years, therefore, many demands have been made to change this situation.

There are relatively sporadic calls for the abolition of the second chamber. However, it seems that these are more populist slogans than actual calls for a return to unicameral parliament. For the Senate is a useful body, and for a number of reasons. On the one hand, it provides a certain group of party activists with positions, satisfies their aspirations, guarantees them income, but also translates into the finances of their party and makes it possible to promote

³⁹ Ibid., p. 14.

⁴⁰ Ibid., p. 19.

and implement its program. This alone is enough to ensure that there is no real interest in abolishing the second chamber, and at least in the near term it is difficult to assume that there is a chance of obtaining the required majority in the chambers for an amendment, let alone the enactment of a new constitution. It should also be remembered that in the case of identical majorities in both chambers, the second chamber is useful in correcting mistakes made in the first chambers when laws are passed in them.

On the other hand, it is much more common to call for changes in the bicameral nature of parliament that go in the direction of balancing the positions of the chambers, or at least strongly strengthening the importance of the Senate. In Poland, on the one hand, the separation of the terms of office of the Sejm and the Senate is postulated, while on the other hand, the powers of the second chamber are strengthened, particularly in the legislative process, e.g. by extending the time for consideration of laws passed by the Sejm or increasing the number of votes necessary to reject the position of the Senate⁴¹. And in this case, however, there does not seem to be a chance – at least in the near future – of making a relevant amendment to the Constitution.

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⁴¹ I have written more extensively on this subject in: *(Nie)realne postulaty reformy Senatu Rzeczypospolitej Polskiej*, [in:] *Rechtsstaatlichkeit und Menschenrechte. 30-Jahre Deutsch-Polnische Juristen-Vereinigung Festschrift zum Jubiläum*, *Praworzędność i prawa zasadnicze. Niemiecko-Polskie Stowarzyszenie Prawników. Księga pamiątkowa z okazji jubileuszu 30-lecia*, ed. E. Tuora-Schwierskott, Toruń 2020, pp. 81-92; *W sprawie wzmocnienia roli Senatu RP jako organu władzy ustawodawczej*, [in:] *XXV lat Konstytucji Rzeczypospolitej Polskiej. Księga jubileuszowa dedykowana Profesor Halinie Ziębie-Załuckiej z okazji 70. rocznicy urodzin*, ed. R. Grabowski, Toruń 2022, pp. 515-526.

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Bikameralizm polski i czeski: przeszłość i terażniejszość

Streszczenie

Celem opracowania jest całościowe spojrzenie na bikameralizm polski, czechosłowacki i czeski, zarówno w okresie międzywojennym, jak i państwa socjalistycznego oraz obecnie. Przeprowadzona analiza prowadzi do wniosku, że ustrojodawcy tych państw bardzo chętnie sięgają do konstrukcji dwuizbowego parlamentu. Jednak tylko w okresie czechosłowackiego federalizmu można mówić, iż była ona w pełni przemyślana. Zakładała ona równowagę izb przy jednoczesnym zakazie majoryzacji w pracach Izby Narodów. W innych okresach bikameralizm jest dosyć przypadkowy, nieprzemyślany. W przeszłości wybory obu izb nie różniły się, obecnie do izby pierwszej są proporcjonalne, zaś do izby drugiej większościowe. Interesującym rozwiązaniem jest wybór $\frac{1}{3}$ składu czeskiego Senatu co 2 lata. W Czechosłowacji i obecnie w Republice Czeskiej nie ma powiązania kadencji izb, natomiast Senat w Polsce wybierany jest razem z Sejmem i kadencję kończy wraz z końcem kadencji pierwszej izby. Najistotniejsza jest jednak asymetria w kompetencjach izb. Izba Poselska w Republice Czeskiej i polski Sejm mają istotniejsze znaczenie niż Senaty tych państw w wypełnianiu wszystkich funkcji. Szczególnie widoczne jest to w przypadku procesu ustawodawczego, gdyż o ostatecznej treści ustawy decydują zawsze izby pierwsze, nie pełnią funkcji kontrolnej, odgrywają też mniejszą rolę w przypadku funkcji kreacyjnej. Drugie izby nie mają wiele kompetencji, a kompetencje te są przy tym dosyć przypadkowe. Z interesującą sytuacją mamy jednak do czynienia w Polsce, gdy w kadencji 2019–2023 większości polityczne w Sejmie i Senacie są inne.

Słowa kluczowe: parlament, bikameralizm, dwuizbowość parlamentu, Republika Czeska, Rzeczpospolita Polska, Senat Republiki Czeskiej, Senat Rzeczypospolitej Polskiej.