UNIWERSYTET JANA DŁUGOSZA W CZĘSTOCHOWIE
Gubernaculum et Administratio 2(30)/2024, t. 1, s. 263–277

http://dx.doi.org/10.16926/gea.2024.02.01.16

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The role and functions of upper legislative chambers in Polish, Italian and German parliamentary systems

Abstract

This paper aims to analyse the position of upper legislative chambers in Polish, Italian, and German parliamentary systems. The selection of these examples was based on clear existing differences in roles and functions performed by the aforementioned chambers. The described chambers function successively in the following models of bicameralism: asymmetrical congruent model (Poland), symmetrical congruent (Italy), and symmetrical incongruent (Germany). The structure of the paper is divided into three different parts, each focusing on the different upper chamber. Each part describes powers and tasks conferred upon upper chambers in the context of three main parliament functions identified by scholars: legislative, control, and creator functions.

However, the paper not only provides a simple description of those chambers but also tries to answer the question of how different factors have influenced the existing shape and position of upper chambers. Moreover, it also tries to examine proposals for reforms of existing state put forward by politicians and influential scholars.

Keywords: parliament, bicameralism, upper chamber, Poland, Italy, Germany.

Introduction

The aim of this article is to compare legislature. Special emphasis will be put on the role and functions of upper legislative chambers in the Republic of Poland, the Italian Republic, and the Federal Republic of Germany. For the purpose of the article, the term legislature should be understood as equivalent to legislative authority. Contemporarily, the concept of separation of powers is considered to be of essential importance in democratic societies. In fact, the afore-

mentioned concept could be used as a criterion to assess whether a particular state is democratic in its nature. However, the idea of separation of powers is mentioned rather implicitly than explicitly in most state constitutions. The rare examples of the counterapproach include article 10 of the Polish Constitution or article 20 of the German Basic Law (*Grundgesetz*). The most notable consequence of the wide acceptance of the separation of powers principle was the establishment of the legislative branch of government as independent from the executive one. Nowadays, parliaments are considered to be the supreme authority representing citizens in all democratic states. In addition to enacting laws, parliaments are entrusted with the task to oversee governments. The condition sine qua non of democracy is that at least one of the parliament's chambers should consist of representatives chosen in a popular direct election[1].

There are several different mutually exclusive models of the organisation of legislature. The exact manner in which the legislative branch is organised is usually decided at the uppermost level – in the constitution. Particular models are influenced by factors such as historical development, intellectual tradition, state's tradition, governing efficiency, and most importantly the issue of division of powers between central and local authorities. According to the most recent data provided by the Inter-Parliamentary Union, there are currently 79 bicameral and 114 unicameral parliaments worldwide[2]. Nevertheless, in European states, bicameral model seems to prevail. The exact way in which the upper chamber functions depends primarily on powers conferred upon it by constitutions. The origin of bicameralism differs among various states. However, it usually traces back to the so-called "aristocratic- bourgeoisie compromises" struck from the XVIII century onwards. In accordance with it, one chamber of parliament (upper house) was pursuing an aristocrat's agenda while the other (lower house) was meant to represent everyone else (which at the time basically meant bourgeoises only). This historical distinction is still reflected in terminology, as well as, in the names of various chambers across the world[3].

Notwithstanding these historical roots, changes in social structure and shifts in the distribution of political influence due to gradual democratization and extension of voting rights have faded this original distinction. Subsequently, this led to far-reaching modifications of previous parliament's chambers functions and in some cases even resulted in a transition into a unilateral model (the example of this being Scandinavian states). The only counterexample of this is the British House of Lords which until today has kept its original character largely

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1 B. Banaszak, *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*, Warszawa 2012, p. 306.

2 Data according to the website of the Inter-Parliamentary Union: https://www.ipu.org/national-parliaments [accessible: 29.01.2023].

3 T. Maciejewski, *Historia powszechna ustroju i prawa*, Warszawa 2011,. p. 553-557, 568-583, 617- 619.

intact, the price for it being the loss of most powers. In many unitary states, the process of electing members of upper chambers was so drastically transformed that now it lacks any significant difference from electing members of lower chambers[4]. Typically, a modern upper chamber plays an advisory and review role in relation to the lower one[5]. It can as well safeguard the interests of local decentralized authorities (a good example of this is the French Senate whose members are elected indirectly by officials serving in municipal authorities) or represent particular vocational groups (as is the case with Irish Seanad Éireann).

The crucial reason for the bicameral model is, however, the idea of federalism. The pioneer of this federally rooted approach to bicameralism is United States Constitution from 1787. In Europe, this model was first introduced in Switzerland[6]. In some nominally unitary, yet de facto deeply decentralized countries (the so-called "regionalised states") traditional bicameralism is evolving in direction of federally based bicameralism and the upper chamber usually article the interests of decentralized regional authorities.

The main part of this article will focus on the description and comparison of upper chambers in three selected states, each of which is elsewhere on the decentralization scale. The Republic of Poland is considered to be a highly centralized unitary state. The Republic of Italy while still nominally of unitary nature, is, however, a deeply decentralized state in which many powers were transferred from central to local authorities. Lastly, the Federal Republic of Germany is a model example of a federal entity. The article will describe the role and essential functions of the upper chambers in the aforementioned states. In summary, it will try to assign these three different cases to analytical models already well established by literature.

1. The Polish Senate

The concept of bicameralism is not unfamiliar to polish parliamentary tradition. Over the course of centuries. The composition and role played by both chambers of the Polish parliament have been constantly changing over the course of history. The pre-partition bicameralism has been reintroduced both in times of the Duchy of Warsaw (1807-1815) and the Congress Kingdom of Poland (1815-1915). During the interwar period, parliament also consist of two chambers. However, the position of the upper house changed during the course of this period. The march constitution favoured the lower chamber Sejm over the upper one (Senate). The April constitution on the other hand strengthened the

[4] L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2018, p. 220.

[5] B. Banaszak, op. cit., p. 312.

[6] L. Garlicki, op. cit., p. 22.

position of the Senate[7]. After Second World War the parliament was organised as a unicameral entity according to socialist legal doctrine. This move was legitimized by a questionable referendum in 1946. The idea of the reintroduction of the Senate was pursued by the opposition in the eighties and was finally accepted by communist authorities during the Round Table Negotiation as a form of political compromise. In 1989 the upper house was entirely elected in fully free popular elections in contrast to the lower chamber in which most seats were guaranteed to be allocated to communist authorities and their allies.

Today the position of the Senate is regulated by Polish Constitution from 2 April 1997. Both Sejm and Senate are named as legislative authorities (art. 10, par. 2 and art. 95, par. 1). The upper house shall be composed of 100 Senators which are elected in a universal and direct way in elections conducted by secret ballot (art. 97). It stems from those constitutional provisions that Senate enjoys the same kind democratic legitimacy as Sejm. However, it should be borne in mind that elections are not guaranteed by Constitution to be equal and proportional. As a result, the exact manner in which Senators are elected can be regulated by lower-rank law. Parliamentary records suggest that this situation was caused by a lack of agreement on the exact character of the upper house which existed during the work on the constitutional draft[8]. The lack of proportionality requirement is a cornerstone of the existing electoral system. Since 2011 Senators are elected in the first-past-the-post system. Due to the fact that elections to the upper house are held at the same time as elections to the lower chamber and given that Senators are elected for the same period of time as members of the lower chamber, it comes as no surprise, that political composition of both chambers used to be the same. The introduction of the first-past-the-post method to elect Senators in contrast with the part list voting in the Sejm election was, according to its supporters, supposed to change that pattern. Nevertheless, until 2019 it changed little. Since 1991 the political party which got the most votes in the Sejm election always also got control of the Senate. It follows from this that Senate almost all the time agreed with Sejm in the course of the law-making process. However, it all changed in 2019, since for the first time ever parties that are in opposition to the current Sejm majority are in control of the Senate which significantly impacts the legislation process and by hindering co-operation within the legislature itself.

Nevertheless, in the Polish bicameral model chambers do not share equal powers and Sejm's position appears to be more meaningful. An example of this is that article 95 of the Polish Constitution confers the power to exercise control over the executive branch to Sejm only.

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[7] M. Dobrowolski, *Zasada dwuizbowości parlamentu w polskim prawie konstytucyjnym*, Warszawa 2003, p. 277.

[8] L. Garlicki, op. cit., p. 189.

The model in which one of the parliament's chambers (usually the lower one) enjoys a stronger position than its counterpart is commonly known as imperfect or asymmetrical bicameralism (as opposed to symmetrical bicameralism). This term was first introduced on the ground of political science by scholar A. Lijphart[9]. The most important argument behind qualifying Polish bicameralism as asymmetrical was already mentioned. The lack of exercising control over the executive by the Senate results in the government being politically accountable only before Sejm. Moreover, the Senate's position in the law-making process is also not equal to Sejm's one. The most controversial dilemma regards especially the boundaries of substantive revision of Sejm's draft laws. It is commonly accepted that Senate may only modify within the boundaries of the draft proposal previously accepted by the Sejm. Another manifestation of the Senate's weaker competencies includes the possibility for Sejm to reject the Senate's amendments by an absolute majority (more votes in favour of rejection than against and abstaining). Constitutional provisions in some cases also require the Senate to take actions in a certain preclusive period of time, failing to meet it results in the Senate's inability to amend legislation. As a part of the legislature, Senate enjoys the right to the initiative in the law-making process. It is worth mentioning, however, that the asymmetrical position of the Senate is not the case when it comes to amending the Constitution. The process itself can be initiated by Senate. If a constitutional amendment is passed by the Sejm it must also be passed by the Senate by an absolute majority in presence of at least half of its component members within 60 days from the day when the amendment was passed in Sejm. According to the Constitution, Senate also takes part, by giving its consent, in the process of appointing certain high-ranking officials outside of the legislative branch such as the President of the Supreme Chamber of Control (art. 205 par. 1), the Commissioner for Citizens' Rights (art. 209 par. 1). Senate also has exclusive power to appoint: two members of The National Council of the Judiciary (art. 187 par. 1 point 3), one member of the National Council of Radio Broadcasting and Television (art 214 par 1) and three members of The Council for Monetary Policy (art 227 par 5). As was already mentioned the Senate does not exercise control powers over the government. Nevertheless, it exercises control powers over certain other bodies. The most notable example of this is controlling the reports of the National Council of Radio Broadcasting and Television (refusing to accept the report is a ground for the expiration of mandates of all members of this body). Other examples include controlling reports produced by the Constitutional Tribunal, the First President of the Supreme Court, the Commissioner for Citizens' Rights, the Com-

[9] A. Lijphart, *Democracies. Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, Yale University Press, New Haven-London 1984.

missioner for Children's Rights, and the President of the Institute of National Remembrance.

It is also possible for the Senate to exercise control over the government in connection with performing other constitutional duties. During legislative procedures pending in the Senate, Senators may request information from government officials as well as their presence. The same is true in regard to the Senate's tasks stemming from Poland's presence in European Union. Control can also be exercised by individual Senators which is a result of their mandate. Senators are entitled to request information from members of the Council of Ministers by making official statements. Some authors also claim that amending laws passed by the Sejm may also constitute a de facto control over the government[10].

It is worth mentioning that according to the Constitution, (art. 98 par. 1, 3, and 4) the term of service of the Senate is inextricably connected to the Sejm's term of service: they both start and end on the same day. The dissolution of the Sejm result also in the dissolution of the Senate.

To sum up, Polish bicameralism takes the form of asymmetrical bicameralism, in which the upper house (the Senate) enjoys fewer powers and competencies than the lower chamber, while at the same time, the composition of both chambers is similar due to the electoral method.

2. The Italian Senate

Italian republic is a democratic parliamentary republic. Italian constitution from 22 December 1947 was considered to be of innovative nature at the time. Among the most notable examples of mechanisms introduced were: instruments of direct democracy such as referendums and popular initiatives, guarantees of civil rights, wide competencies of local authorities, and the separate institution of the constitutional court (Corte costituzionale della Repubblica Italiana)[11]. It should be underlined that it does not explicitly mention the idea of separation of powers. It is formulated rather implicitly. The system of links and relations between different state bodies is described by Italian scholars as rationalized parliamentarism (governo parlamentare razionalizzato). In this constitutional framework, the directly elected parliament is considered a most important state body[12]. Bicameralism is explicitly stated in art. 55 of the Italian Constitution. This idea is deeply rooted in Italian monarchist tradition. The present shape of parliament, as composed of the Chamber of Deputies (Camera dei

[10] J. Szymanek, *Rola Senatu RP w wykonywaniu kontroli parlamentarnej* (*uwagi de lege lata i de lege ferenda*), „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2004, no. 1.

[11] K. Wojtaszczyk, W. Jakubowski., P. Załęski, *Współczesne systemy rządów*, Warszawa 2017, p. 117.

[12] P. Sarnecki, *Ustroje konstytucyjne państw współczesnych*, Warszawa. 2013, p. 136.

deputati) and the Senate of the Republic (Senato della Repubblica) is based on previous constitutional regulation – the Albertine Statute (Statuto Albertino)[13].

The most notorious characteristic of Italian bicameralism is its symmetrical nature, as both parliament's chambers enjoy equal rights in performing tasks conferred upon them. Italian parliament consists of two chambers, the lower chamber being the Chamber of Deputies originally with 630 Deputies. The upper house is the Senate which consisted originally of 315 Senators elected, no more than 5 Senators appointed by the President of the Republic in recognition of their outstanding service to the state and former Presidents of the Republic (art. 59 of Italian Constitution). Nowadays, after the constitutional amendment in 2020 was passed, the Chamber of Deputies and Senate consist of respectively 400 and 200 members[14]. Elections in Italy are free, equal, direct, general, and conducted by secret ballot (art. 48 of the Constitution). Parliament chambers are considered to be a political representation of politically sovereign citizens (art. 1 of the Constitution). Each member of Parliament represents the Nation and carries out their duties free from imperative mandate (art. 67 of the Constitution)[15]. Terms of service of both chambers run parallelly and last five years (after the Constitution amendment from 1963). Senators are elected from twenty voting districts, boundaries of which converge with the boundaries of Italian regions. More than one senator is elected from one district. Some senators are elected by Italian citizens who reside abroad. The electoral system tends to favour the winning parties in certain districts by automatically allocating to them 55% seats possible to win in that district. The structure and composition of each chamber mirror structure and composition of the respective one. Although the legislative function is still mostly at the hands of parliament, as a result of a constitutional amendment from 2001, its position in the legislative process was severely weakened. According to amended article 117 of the Italian Constitution, the Parliament has an exclusive right to initiate the law-making process in 17 predefined areas of competencies, which include among others: external affairs and international relations, immigration, relations between states and religious organizations, and Churches, defence and military forces, protection of financial market stability, EU affairs and organisation of the judiciary. In twenty different areas, the Parliament has a right to regulate matters of essential importance[16]. It is up to regional authorities to regulate everything else in these areas, which is called the shared or competitive regulatory power. Anything which falls outside of the scope of this exclusive or shared area of parlia-

[13] M. Czornyj, *Statut Albertyński z 1848 roku i jego znaczenie dla rozwoju ustroju konstytucyjnego Włoch*, „Prawo i Polityka" 2015, no. 6, p. 186-191.

[14] A. G. Kamińska, *The constitutional reform of the Italian Parliament. Effects and issues of the law 19 October 2020 No. 1*, Gubernaculum et Administratio 2022, no. 1, p. 79.

[15] P. Sarnecki, op. cit., p. 142.

[16] P. Sarnecki, op. cit., p. 146.

mentary regulation can only be regulated by regional authorities. The Parliament's authorization is also required prior to the signing of an international agreement by the President of the Republic. It must also give its consent to enable the Council of Ministers to issue decrees with the power of ordinary legislation. It is also up to the Parliament to transform these decrees into ordinary legislation later. The Parliament enjoys the right to initiate the legislative procedure and to pass the bills. The legislative procedure itself can take the form of ordinary procedure (which requires the approval of both chambers) or special commission procedure in accordance with article 72 of the Italian Constitution[17].

Italian Parliament can exercise control over the government to quite a large degree. The Council of Ministers is required to receive a vote of confidence in both chambers (art. 94 of the Constitution), and government officials are also politically accountable before the Parliament (art. 95 of the Constitution). Moreover, it is possible to conduct debates in both chambers upon request made by the president of a political faction or a certain number of members of parliament. In this case procedure in each chamber is not identical, in the lower chamber the motion can be submitted by at least 10 deputies, whereas in the Senate only a minimum of 8 Senators must support it. In the Italian Parliament, permanent parliamentary committees can exercise control over the government. In addition to this, the Parliament may institute inquiries on matters of public interest and to do so establish a special committee granted with the same powers and limitations as judicial authorities (art. 82 of the Constitution). Both chambers are debating the reports made by the Court of Audit (Corte dei Conti). They can exercise control powers over the work of government as a whole as well as over the work of particular ministers. This control takes the form of interpellations or inquiries directed to the Council of Ministers. When it comes to the process of appointing certain officials, it is worth noticing the competence to appoint 5 out of 15 members of the Constitutional Court (this right is exercised by both chambers at a joint session). In case of the existence of a vacancy in the post of the President of the Republic, the duties of the head of state are performed by the President of the Senate[18].

The Italian Senate functions in the context of strongly symmetrical bicameralism. It is often described as a "perfect reflection" of the Chamber of Deputies. Criticism of this model focuses on the far-reaching resemblance of compositions of the two chambers as well as almost identical functions and tasks performed by them. Over the course of the legislative process, two almost indistinguishable procedures are conducted in each of the chambers[19] According to Italian subject literature, the Senate's function as a protector and guarantor of the autonomy

[17] P. Sarnecki, op. cit., p. 150.

[18] P. Sarnecki, op. cit., p. 151-2.

[19] Z. Machelski, *Modele parlamentów dwuizbowych. Ujęcie porównawcze*, „Wrocławskie Studia Politologiczne" 2012, no. 13, p. 153.

of regional authorities has almost entirely faded over time. In recent years they were several attempts taken in order to reform the position of the Senate. They were especially aiming at transforming Senate into an advocate and guardian of the prerogatives of regional authorities. The most important attempt was taken by Matteo Renzi government but was rejected in 2016 referendum[20]. According to this planned reform, the Senate would be stripped from most legislative powers and only be allowed to participate in the legislative process in certain enumerated areas, the rationae behind this being protection of regional authorities' prerogatives by the Senate

3. The German Bundesrat

The German Federal Council (Bundesrat) is one of the supreme constitutional bodies of the German Federal Republic. Nevertheless, its exact status and position are somewhat not clear[21]. In article 50 of German Basic Law (Grundgesetz), Bundesrat is defined as a body that enables every land to participate in the legislative process at the federal level, federal administration and European Union affairs. According to these provisions, it shall reinforce the accomplishment of the most important federal tasks. In German subject literature, Bundesrat is described as a manifestation of the federal nature of the state as opposed to the Bundestag being described as a body pursuing the interests of the state as a unitary entity. Bundesrat when it comes to functional terms is described as a mixed legislative-administrative authority with its legislative functions being, however, dominating. Nevertheless, its complex position in constitutional order is usually underlined. As a result of this complexity, Bundesrat is often described as a "non parliamentarian chamber of the parliament"[22].

Members of Bundesrat are not directly elected by German citizens. They are members of Land Governments which appoint and recall them (art. 51 of Basic Law). Among them, there is always a Minister-President of Land Government (Landesregierung). The number of representative each land can appoint to Bundesrat is dependent upon the number of votes each land have which in turn depends on the number of population of this land. The minimum number of votes is 3, when the number of population is greater than 2 million, it has 4 votes, in case when number of population is greater than 6 million, it has 5 votes, when it is greater than 7 million, the land has 6 votes. After the reunification of Germany, Bundesrat has 69 members.

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[20] A. G. Kamińska, op. cit, p. 77.

[21] M. Bożek, *System konstytucyjny Republiki Federalnej Niemiec*, Warszawa 2017, p. 99.

[22] P. Czarny, *Bundesrat : między niemiecką tradycją a europejską przyszłością*, Warszawa 2000, p. 105.

Bundesrat is supposed to be the guardian of land's interests and guarantor of their prerogatives stemming from Basic Law. As a consequence, there is a rule of unanimity voting of land's delegation to Bundesrat. Delegates vote according to instructions provided by the Land's Governments. In case of different votes among delegates from the same land, votes that differ from instruction are not taken into account. Considering the above, it is believed that the mandate to Bundesrat is of imperative nature. In addition to this, there exists a rule of incompabilitas, according to which it is strictly forbidden to serve both in Bundestag and Bundesrat at the same time[23]. It should be mentioned, that Bundesrat is not a term body. It works permanently, only its composition changes after elections to the land's parliaments (Landtags). These elections are held on different dates across Germany.

Bundesrat has a president elected to this position for a year term (art. 51 par. 1 and 2 of Basic Law). According to constitutional precedence, this post is occupied in a rotational way by different Minister-Presidents of Land Governments. The President of Bundesrat, according to art. 57 of Basic Law, performs duties of the head of state if there is a vacancy in the post of Federal President. The Bundesrat's President along with two Vice-Presidents constitute the Presidium of Bundesrat, which should safeguard the proper course of work in the chamber. Another internal body is the Permanent Advisory Council, which consists of the Presidium and envoys from all Lands, delegated to federal authorities. The Federal Minister of Relations with Lands can take part in the work of this body. Therefore it is considered to be a field of cooperation with the federal government[24].

As mentioned above, the functions of Bundesrat are regulated in art. 50 of the Basic Law and include cooperation in the legislature process at the federal level, cooperation in completing federal administrative tasks, and cooperation in European Union affairs.

Regarding the first of the aforementioned areas, it must be noted that Bundesrat has a right to initiate the legislative process as well as to give an opinion about government-sponsored bills (preliminary control of draft). Some laws adopted by Bundestag require approval given by Bundesrat as another legislative chamber (it may use the absolute or postponed veto). In case when there are doubts regarding approval, the Mediation Committee takes part in the process. Regarding other federal bills, Bundesrat may veto them, which, however, can be rejected by Bundestag in accordance with special procedure (art. 77 of Basic Law). Therefore, in reality, Bundestag may push the adopted bill and Bundesrat's veto right is limited. It exemplifies the existing asymmetry between these two chambers[25]. Bundesrat also takes part in the legislative process in case

[23] P. Czarny, op. cit., p. 106.

[24] M. Bożek, op. cit., p. 104-105.

[25] P. Sarnecki, op. cit., p. 205.

of a legislative emergency state – it must accept the state itself and accept government proposals against the will of the Bundestag[26]. Bundesrat also takes part in the constitutional amending process (art. 79 par. 2 of the Basic Law), all amendments made by Bundestag require the approval of Bundesrat by a qualified 2/3 majority of its component members.

Cooperation in the federal administrative task has a far greater extent and stems from the character of Bundesrat itself. Bundesrat shall give its consent to executive regulations for bills, which require approval by Bundesrat and are executed by the land's authorities. It must also accept the general administrative rules prepared by the federal government and addressed to the land's authorities. Bundesrat also along federal government takes part in the federal overseeing process[27].

Another area of Bundesrat activity includes European Union affairs. Bundesrat is a field of cooperation between the federal government and land's governments regarding these affairs. The federal government is obliged to give detailed information regarding European Union affairs. Bundesrat's position must be taken into account if European Union affairs directly concern land's interests. In order to effectively manage European Union affairs Bundesrat may establish a special European Committee, whose resolutions have a force equal to those sponsored by the whole Bundesrat[28]. In literature, there exists a consensus that Bundesrat facilitates and structure land's participation in the European integration process. There is a visible tendency of transformation in direction of strengthening land's representation at the European Union level[29].

Bundesrat exercises control over the executive only to a limited extent. As a lower chamber of parliament, it is informed by the government about budget implementation and receives special reports from the Federal Court of Auditors. On the basis of this, Bundesrat decides whether to give discharge (art. 114 of the Basic Law). Other control functions stem from art. 53 of Basic Law, which obliges the federal government to constantly inform Bundesrat about the current state of state affairs.

Bundesrat has the right to appoint half the number of the Federal Constitutional Court's members and to initiate proceedings before it in cases enumerated in the Basic Law.

German legislature model is constantly evolving in direction of strengthening the competencies of the lower chamber – so as to take the form of strongly symmetrical bicameralism. This bicameralism is incongruent, characterized by a different method of choosing members of each parliament's chamber. As

[26] M. Bożek, op. cit., p. 106.

[27] P. Sarnecki, op. cit., p. 206.

[28] M. Bożek, op. cit., p. 105, 106-7.

[29] J. Szymanek, *Parlamenty narodowe w procesie integracji europejskiej*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2008, no. 1, p. 49.

I mentioned earlier, the exact position of Bundesrat in constitutional order is not entirely clear and leaves many doubts. However, it is also an innovative solution on the ground of German federalism.

Conclusion

The objects of consideration in this article were three different models of a bicameral legislature with particular emphasis given to the role and functions of the upper houses in the parliamentary system of Poland, Italy, and Germany. The described chambers function successively in the following models of bicameralism: asymmetrical congruent model (Poland), symmetrical congruent (Italy), and symmetrical incongruent (Germany). Besides this, the roles and functions of the aforementioned upper chambers were presented. It should be underlined that there are a few factors that have an impact on the chamber's shape such as tradition, governing efficiency, and territorial organisation of the state (a division of powers between central and local/regional authorities). In general, it can be said, that upper chambers take part (to a lesser of greater extent) in the legislative process. However, they exercise control over government only to a very limited extent and in most cases in an indirect way and using archaic means (the example for this being the Polish Senate). It is usually raised in the subject literature that the control powers of parliament should be strengthened[30]. The bicameral model is often a subject of criticism, especially the Polish model when the current shape of the Senate is believed to be inappropriate[31]. In the context of the recent development in polish politics, it should be noted that even with all of its drawbacks bicameralism can quite effectively serve as a part of checks and balances mechanisms. Nevertheless, the institutional balance should be achieved by splitting competencies and powers between each chamber in a reasonable way. Bicameral parliament enables better representation and articulation of differing social groups' interests and political affiliations. Most importantly, it also makes it possible to take into account regional and local interests in the process of state policy creation. It is precisely in this process where the upper house should have the last say in order to safeguard the concepts of decentralization and subsidiarity which are of primary importance to contemporary democratic states.

[30] A. Kulig, *Uwagi o niektórych wyzwaniach kontrolnej legislatywy w systemach parlamentarnych państw europejskich*, [w:] M. Grzybowski, B. Naleziński (red.), Państwo demokratyczne, prawne i socjalne. Studia historyczno-prawne i ustrojowo-porównawcze. Księga jubileuszowa dedykowana profesorowi Zbigniewowi Antoniemu Maciągowi, Kraków 2014, t. II, s. 199-216.

[31] B. Opaliński, *Uwagi o potrzebie modyfikacji drugiej izby parlamentu we współczesnym polskim systemie ustrojowym*, „Przegląd Prawa Konstytucyjnego" 2012, no 1.

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Rola i funkcje drugiej izby parlamentu w Polsce, Włoszech i RFN

Streszczenie

Przedmiotem artykułu jest porównanie legislatywy, w tym pozycji, roli i funkcji drugich izb parlamentu w Polsce, Włoszech i Republice Federalnej Niemiec. Pod pojęciem legislatywy rozumiem władzę ustawodawczą. Współcześnie za podstawowy wyznacznik państw demokratycznych uznaje się zasadę podziału władz. Konstytucje nielicznych państw określają ją expressis verbis, np. art. 20 Ustawy Zasadniczej Niemiec z 1949 r. (dalej UZ), czy też art. 10 Konstytucji Polski z 1997 r., większość czyni to w sposób dorozumiany. Parlament jest we wszystkich krajach demokratycznych jednym z naczelnych organów państwa o charakterze przedstawicielskim, realizującym władzę ustawodawczą i sprawującym kontrolę nad funkcjonowaniem władzy wykonawczej. Cały lub przynajmniej jedna z jego izb pochodzi z powszechnych wyborów. Jest to też conditio sine qua non demokratyzmu. Współcześnie istnieje kilka modeli struktury parlamentu. Wybór jednego z nich podyktowany jest z reguły decyzją ustrojodawcy. W grę wchodzą czynniki takie, jak: doświadczenia historyczne, tradycje ustrojowe, efektywność modelu i przede wszystkim model państwa (struktura terytorialna). Bikameralizm jest dominującym modelem w państwach europejskich. Istota funkcjonowania izby drugiej różni się w zależności od przyznanych jej uprawnień przez ustawodawcę. W artykule opisuję i porównuję izby drugie trzech państw o różnej strukturze terytorialnej: Polski jako państwa unitarnego, Niemiec – federalnego i Włoch jako państwa o strukturze zregionalizowanej. Opisywane izby funkcjonują w następujących modelach bikameralizmu: asymetryczny model kongruentny (Polska), symetryczny kongruentny (Włochy) i symetryczny niekongruentny (Niemcy). Artykuł jest podzielony na trzy części, z których każda koncentruje się na innej izbie wyższej. Pokazuję w nich role i podstawowe funkcje (ustawodawcza, kontrolna, kreacyjna) pełnione przez izby drugie w wymienionych państwach. W artykule również próbuję odpowiedzieć na pytanie, w jaki sposób różne czynniki (m.in. historyczne) wpłynęły na istniejący kształt i pozycję izb wyższych. Ponadto staram się również ocenić propozycje reform istniejącego stanu rzeczy, wysuwane przez polityków i doktrynę.

Słowa kluczowe: parlament, bikameralizm, izba wyższa, Polska, Włochy, Niemcy.