

DISSOLUTION OF THE PARLIAMENT ACCORDING TO THE CONSTITUTION OF THE REPUBLIC OF POLAND

Abstract

Dissolution of the parliament is a characteristic feature of parliamentary system of government. The Constitution of the Republic of Poland has adopted a rationalized parliamentary system of government, inter alia the constructive vote of no confidence, modeled on the German Basic Law. For this reason the president can dissolve the House of Representatives (*Sejm*) only in two situations: in the event that a vote of confidence has not been granted to the Council of Ministers pursuant to Article 155 Paragraph 1 or if, after 4 months from the day of submission of a draft Budget to the Sejm, it has not been adopted or presented to the president for signature (Article 225). Furthermore the Sejm may shorten its term of office by a resolution passed by a majority of at least two-thirds of the votes of the statutory number of Deputies (Article 98, Paragraph 3).

Key words: dissolution of the parliament, Constitution of the Republic of Poland, president.

Dissolution of parliament is an inherent feature of the parliamentary system of government. In the event of a cabinet crisis (a vote of no-confidence passed by the parliament towards the government) a normal means of its removal is dissolution of the parliament and selecting by means of elections a new government majority. Therefore, this institution is common in the constitutions of European statesⁱ. However, it is not known by the United States Constitution of 1787, which adopted a presidential system of government, characterized by, among others the lack of the equivalent of the Council of Ministers. The President is the sole body of executive power (Szymanek 2009: 296).

In Poland legislative power is exercised by the Sejm (460 deputies) and Senate (100 senators)ⁱⁱ. In the tradition of Polish constitutionalism there has evolved the principle of “asymmetrical” bicameralism, indicating the predominance of the first chamber (Sejm) over the second chamber (Senate). Such a system of relations between the two chambers of parliament is also characteristic of the current Constitution of the Republic of Poland of 2 April 1997ⁱⁱⁱ. Although both chambers serve as the legislative^{iv}, the Sejm can reject the Senate’s stance on an act (Article 121). The Sejm (without the participation of the Senate) exercises control over the Council of Ministers (Article 95 paragraph. 2). The Government must enjoy the confidence only of the first chamber^v. As a result, it is for the Sejm to make fundamental decisions in the sphere of state policy, while the Senate’s role is limited merely to participation in the legislation (Bożyk 2009: 204).

Predominance of the Sejm over the Senate is also visible in the provisions defining the term of office of both chambers. In the light of Article 98 Paragraph 1 the Sejm and the Senate are elected for a four-year term. The Sejm’s term of office begins on the day of the

Sejm assembly for its first sitting and lasts until the day preceding the meeting of the Sejm of the next term. Thanks to this solution there does not exist in Poland an inter-term break. The term of office of the Senate is always subordinated to the term of office of the Sejm, which means that it begins on the day of assembly of the new Sejm for the first sitting and ends on the day preceding the assembly of the new Sejm for the first sitting. Elections to both chambers of Parliament are always held on the same day^{vi}.

The principle of asymmetric bicameralism is also reflected in the provisions of the Constitution relating to the dissolution of parliament. The creators of the Polish constitution of 1997, decided to dispense with the traditional term “dissolution of the Sejm” and replace it with “shortening the term of office” (see criticism by Witkowski 2009: 276). This follows from the fact that the decision to dissolve the Sejm does not result in immediate termination of its work. A shortened term of the Sejm lasts until the day preceding the assembly of the new Sejm for the first sitting. The decision to shorten the term of the Sejm may be taken – in certain circumstances – by the President^{vii} or the Sejm. The decision of the Sejm or the President about shortening the term always result in shortening the term of office of the Senate^{viii}, although it does not take part in its adoption. For the term of office of the Senate is always subordinated to the term of the Sejm and if the term of the first chamber is shortened, the term of the second chamber is also shortened.

In accordance with Article 98 Paragraph 3 of the Constitution the Sejm may shorten its term of office by a resolution passed by a majority of at least 2/3 vote of the statutory number of deputies. As the parliament has 460 members, this majority is 307 members. Thus the decision to shorten the term of office shall be agreed between the governing and opposition groups (Rączka 2010: 162). Resolution of the Sejm is valid from the date of its adoption (Rączka 2010: 164; Garlicki 1999: 20; Włodek 2009: 207). The Constitution does not specify in Article 98 Paragraph 3 reasons to shorten the term of office^{ix}. This means that the Sejm can always adopt a resolution to dissolve, if only a sufficient majority of deputies gather. In practice, the self-dissolution of the Sejm is a testimony of a political crisis (Winczorek 2008: 229) but may also result from other conditions^x. The Constitution also does not limit the possibility of shortening the term of office in terms of the moment decision.

In contrast to the Sejm the decision of the President to shorten the term of the parliament is dependent on conditions well-defined by the Constitution^{xi}. First of all, the President may shorten the term of office of the Sejm under Article 155 Paragraph 2 in case of failure of all three procedures for the appointment of a new government, provided for by Article 154 and Article 155 of the Constitution. In the final, third stage of the appointment of government (Article 155 Paragraph 1) the Sejm grants the Council of Ministers a vote of

confidence by a simple majority of votes. Failure to obtain such a majority means a profound political crisis; therefore the shortened term in this case is a natural solution to the crisis. Decision on the dissolution of the Sejm the President shall take obligatorily, unless there is a case of introduction of extraordinary measures (martial law, a state of emergency or a state of natural disaster). The decision of the President on the shortening of the Sejm's term of office is not subject to countersignature of the Prime Minister (Article 144 Paragraph 3 Point 3).

In addition, the President may decide to shorten the term of the Sejm if, within four months from the date of submission of the budget bill to the Sejm it will not be presented to the President for signature (Article 225). In this case the president decides to shorten the term of the Sejm, optionally, within 14 days. The four month period is counted from the date of submission by the government a draft budget bill in the Sejm^{xii}. A fourteen-day limit for a decision by the president is counted from the date of expiry of four months the constitution grants the parliament to legislate on the budget bill. Using by the President the option of reducing the term of the Sejm is the expression of its constitutional function of an arbitrator in a situation involving disruption of normal relations between state bodies (Rączka 2010: 174; Chorążewska 2005: 80; Sokolewicz 2007: 3). It is different in the case of shortening the term of office under Article 155 Paragraph 2, since that provision does not allow the president to take a free decision. Head of State acts in this case only as a "constitution notary" (Szymanek 2009: 303).

The effect of taking by the Sejm or the President the decision to shorten the term of office is the need for new parliamentary elections. In accordance with Article 98 Paragraph 5 the President calls elections to the Sejm and the Senate and appoints a date not later than 45 days from the date of order to shorten the Sejm's term of office. The President convenes the first meeting of the newly elected Sejm no later than 15 days after the election. In the longer term, the end of the term of the Sejm obliges the Council of Ministers to resign and terminates the term of office of members of the State Tribunal. According to the principle of discontinuation of parliamentary works the works of the Parliament expire with the end of the term of office, especially the legislative process.

In practice, the decision to shorten the term of office under the provisions of the 1997 Constitution was made only once, on 7 September 2007. The immediate cause of shortening the term of office was disintegration of the government coalition formed by the "Law and Justice" (PiS), Self-Defence ("Samoobrona") and the League of Polish Families (LPR). 377 deputies voted for the shortening of the term of office of the Sejm, including nearly all the members of the ruling party ("Law and Justice"). As a result of early elections held on 21 October 2007 the office was taken over by the coalition the Civic Platform (PO) – the Polish

Peasant Party (PSL) and the office of the Prime Minister was assumed the head of the Civic Platform – Donald Tusk.

Modern parliaments are generally chosen for four- or five-year terms of office. Term of office of the parliament on the one hand results from the desire to reflect the will of the sovereign, and on the other – it must serve to ensure stability in the personnel composition of the parliament and to ensure continuity of its works (Czarny 2011: 242). Dissolution of parliament is always a unique end of its term, if it is determined by the constitution in a rigid manner. This is also the case in Poland. The decision as to shorten the term of office may be taken by the Sejm itself or the head of state. Conditions of shortening the term of office of the Sejm by the President show that he can decide on this matter only in the absence of a stable parliamentary majority, unable to establish a government or pass the budget law. Thus the institution of shortening the Sejm's term of office is an expression of “rationalization” of the parliamentary system of government (Garlicki 2008: 200). Peculiarity of Polish solutions is only “shortening of the term” of the dissolved Sejm, which means that the term – but short – lasts until the day preceding the assembly of the new Sejm for the first meeting. In this way the Polish legislator stresses the strong position of the first chamber of the political system in relation to the executive (the president).

Bibliography

1. Bożyk, S. (2009) Parlament Rzeczypospolitej Polskiej. In: Grzybowski, M., ed. *Prawo konstytucyjne*. Białystok: Temida 2. Pp. 200-244.
2. Czarny, P. (2011) Sejm i Senat. In: Sarnecki, P., ed. *Prawo konstytucyjne*. Warszawa: C.H. Beck. Pp. 221-287.
3. Chorążewska, A. (2005), Prezydent jako czynnik równowagi. Arbitraż prezydencki. *Przegląd Sejmowy*. No. 6: 59-82.
4. Garlicki, L. (1999) Artykuł 98. In Garlicki, L., ed. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. vol. I. Warszawa: Wydawnictwo Sejmowe. Pp. 1-36.
5. Garlicki, L. (2008) *Polskie prawo konstytucyjne. Zarys wykładu*. Warszawa: Liber.
6. Rączka, M. (2010) *Rozwiązanie parlamentu przed upływem kadencji w polskim i włoskim prawie konstytucyjnym*. Toruń: TNOiK „Dom Organizatora”.
7. Sokolewicz, W. (2007) Artykuł 225. In Garlicki, L., ed. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. vol. V. Warszawa: Wydawnictwo Sejmowe. Pp. 1-17.
8. Szymanek, J. (2009) Rozwiązanie parlamentu. uwarunkowania prawne i polityczne. In: Wawrzyniak, J., Laskowska, M., ed. *Institucje prawa konstytucyjnego w dobie integracji europejskiej. Księga jubileuszowa dedykowana Prof. Marii Kruk-Jarosz*. Warszawa: Wydawnictwo Sejmowe. Pp. 296-307.
9. Winczorek, P. (2008) *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*. Warszawa: Liber.
10. Witkowski, Z. (2009) Sejm Rzeczypospolitej Polskiej. In: Witkowski, Z., ed. *Prawo konstytucyjne*. Toruń: TNOiK „Dom Organizatora”.
11. Włodek, T. (2009) *Institucja rozwiązania parlamentu w polskim prawie konstytucyjnym*. Warszawa: Wydawnictwo Sejmowe.

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- ⁱ No possibility to dissolve parliament before the end of the term is rare (e.g. such a situation occurs in Norway).
- ⁱⁱ The tradition of a bicameral parliament dates back to the of the Noble Republic. In 1946 the Senate had been abolished by the communists, and then restored in 1989 as a result of the talks of the “round table”.
- ⁱⁱⁱ The official translation of the constitution into English can be found at: www.sejm.gov.pl.
- ^{iv} Article 10 Paragraph 2 and Article 95 Paragraph 1 of the Constitution.
- ^v See Articles 154-155 specifying the mode of appointment of the Council of Ministers. According to Article 158 a vote of no confidence may be passed only by the Sejm at the request of 46 deputies. Likewise, the Sejm may adopt a vote of no confidence against a minister.
- ^{vi} Pursuant to Article 98 Paragraph 2 elections to the Sejm and Senate are ordered by the President not later than 90 days before the expiry of four years from the start of term of the Sejm and Senate, setting the election on a no working day, falling within 30 days before the expiration of 4 years after the start of term of the Sejm and Senate.
- ^{vii} Decision to shorten the term of the Sejm cannot be taken by a person temporarily performing the functions of head of state, ie. , the Marshal of the Sejm or the Speaker of the Senate (Article 131 Paragraph 4).
- ^{viii} Article 98 Paragraph 3 second sentence and Article 98 Paragraph 4 second sentence.
- ^{ix} This follows from the fact that the Sejm has a far-reaching organizational autonomy (Rączka 2010: 161).
- ^x In 2010 Poland considered the possibility of shortening the term of office of the Sejm and the parliamentary elections in spring 2011 (date of elections is normally in October 2011), in connection with assuming by Poland the EU Presidency on 1 July 2011.
- ^{xi} Before deciding to shorten the term of office of the Sejm, the President must consult the Marshall of the Sejm and the Speaker of the Senate (Article 98 Paragraph 4). Opinions of the Marshal and the Speaker are not binding, but their award is a condition to shorten the Sejm’s term of office by the President (Winczorek 2008: 230). The Marshal and the Speaker must express their opinion without delay. In the event of non-submission of the opinion the President would shorten the term of office (Garlicki 1999: 24).
- ^{xii} In accordance with Article 222 of the Constitution the legislative initiative in the budget bill rests solely in the hands of the Council of Ministers. Its duty is to present to the Sejm a draft at least three months before the start of the financial year, ie. until 30 September. In exceptional cases, the project may be submitted later.