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Прегледни рад

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## **THE LEGAL GROUNDS OF EMERGENCE AND TERMINATION OF MANDATES OF PARLIAMENTARIANS IN BELARUS AND IN POLAND: COMPARATIVE ANALYSIS**

### **Resume**

The existing grounds for granting and terminating Belarusian and Polish parliamentary mandates from the legal point of view are rather debatable nowadays. The article presents a comparative study of these legal categories based on the considerable historical, regional and legal similarity of the above neighbouring countries and their legal doctrines.

Keywords: the grounds for granting mandates of parliamentarians, the grounds for terminating mandates of parliamentarians, Parliament, Belarus, Poland.

### **INTRODUCTION**

The existing grounds for granting and terminating Belarusian and Polish parliamentary mandates from the legal point of view are rather debatable nowadays, especially in legal polish and belarusian

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law science<sup>1</sup>. The grounds for granting and terminating mandates of the Sejm's deputies, National Assembly Senators of the Republic of Poland, as well as those of deputies to the House of Representatives and Members of the Council of the Republic of the National Assembly of the Republic of Belarus, present a notable element that defines the legal standing of Belarusian and Polish Members of Parliament. Taking into account certain disputability of these legal elements in the MPs' status structures from the perspective of modern legal science, as well as the considerable historical, regional and legal similarity of the above neighbouring countries, let's perform a more detailed comparative study of these categories.

## THE MAIN PART

Thus, the only rationale and legal circumstance for granting a mandate to a deputy of the House of Representatives is direct election. The legal circumstance for granting parliamentary mandates to the Members of the Council of the Republic is indirect election as well as the appointment by the President of Belarus.

Note that the constitutionally set number of mandates granted to the Lower Chamber of Belarusian Parliament – the House of Representatives – is 110. The Council of the Republic as the Upper Chamber of Belarusian Parliament is a territorial representation Chamber. All in all, there are 64 mandates for the Upper Chamber of Belarusian Parliament. Each region and the city of Minsk elect eight Members of the Council of the Republic by secret ballot at the local base level council sessions. Eight Members of the Council of the Republic are appointed by the President of the Republic of Belarus. The total number of parliamentary mandates set by the Constitution of the Republic of Belarus equals 174.

Legislative power in the Republic of Poland belongs to the Sejm and the Senate.

<sup>1</sup> Krzysztof Graewski Status prawny posła i senatora, Wydawnictwo sejmowe, Warszawa, 2006.; Paweł Sarnecki (red.) Prawo konstytucyjne Rzeczypospolitej Polskiej., Wydawnictwo C.H. Beck, Warszawa, 2011.; Leszek Garlicki Prawo polskie konstytucyjne, zarys wykładu (wyd. 15), LIBER, Warszawa, 2011.; Wiesław Skszydło (red.) Polskie prawo konstytucyjne, Oficyna Wydawnicza VERBA, Lublin 2008.; Vasilevich, G.A. The constitution and problems of improvement of an electoral law in the Republic of Belarus / G.A. Vasilevich// Journal of russian law. – 1999. – No. 5/6. – pp. 149-157.; Nudnenko, L.A. Constitutional legal status of the deputy of the legislature governmental body in the Russian Federation/ L. A. Nudnenko. – SPb.: Yurid. Press center, 2004. – 473 pp. and other literature.

The Sejm is the Lower Chamber of the Parliament and consists of 460 deputies, also granted their mandates by election. Elections to the Polish Sejm are universal, equal, direct, proportional and conducted by secret ballot.

The Senate – the Upper Chamber – consists of 100 senators. Polish senators are granted their mandates by universal direct elections by secret ballot. The number of Polish parliamentary mandates totals 560.

Both direct and indirect elections in the Republic of Belarus are based on the principles of universality, equality, freedom and secret ballot, which demonstrates the democracy and the rule of law in the country. A good example of this is a statement by a Belarusian professor G.A. Vasilevich, who justly noted that only “free and fair elections give us the right to say that the people’s will as that of the only source of authority is identical to the election results”<sup>2</sup>.

We should also emphasise the fact that the four-year term of office served by Belarusian Members of Parliament starts on the first day of the newly elected Chamber session and ends on the opening day of the first session of the House of Representatives of a newly assembled Council of the Republic (except for the cases provided for in Article 8 of the framework law)<sup>3</sup>. The above fact means that newly elected Members of Parliament start exercising their mandates on the day of the first session of the House of Representatives, Council of the Republic. Previous parliament Members stay in office up to the said date. In case of war, parliament Members’ term of office may be prolonged.

As for Poland, pursuant to Article 98 Section 1 of the Constitution the Polish Sejm and the Senate, as well as Belarusian Parliament Chambers, are elected for a four-year term of office. According to a Polish researcher, professor Pawel Sarnecky, this procedure is typical of the Polish parliamentary tradition<sup>4</sup>: it was

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2 Vasilevich, G.A. The constitution and problems of improvement of an electoral law in the Republic of Belarus / G.A. Vasilevich// *Journal of Russian law*. – 1999. – No. 5/6. – pp. 149-157, p. 149.

3 About the status of the deputy of the House of Representatives, member of Council of the Republic of the National Assembly of Republic of Belarus: Law of Republic Belarus, 04. 11.1998, No. 196-Z: in an edition. Law of Republic Belarus of 17.07.2018.

4 Pawel Sarnecki (red.) *Prawo konstytucyjne Rzeczypospolitej Polskiej.*, Wydawnictwo C.H. Beck, Warszawa, 2011, p. 200, 242.

formed during the post-war period and has been applied since the year 1952 (we know that before World War II the Polish Parliament's term of office used to be 5 year). However, the assemblies of the Polish Parliament (1993 – 1997, 1997 – 2001, 2001 – 2005 and 2007 – 2011) have served a full four-year term of office. This circumstance, as professor Leszek Garlicki rightly states, can be explained by the fact that the tumultuous political events of the previous years presented an obstacle to observing the above period (for example, the 5<sup>th</sup> assembly Sejm (2005 – 2007) voluntarily wound up before time).

Note that Article 98 Section 1 of the Fundamental Law of Poland states that the term of office of the Sejm and the Senate shall begin on the day on which the Sejm assembles for its first sitting and shall continue until the day preceding the assembly of the Sejm of the succeeding term of office. These provisions also stay in force if the Sejm's term of office is prolonged or shortened. We believe that the above constitutional regulation serves to eliminate any chance of the executive power exceeding its authority during the period when the term of office of one Sejm and Senate is already over, but the succeeding one has not started yet, thus securing operational stability and continuity of the state power.

In fact, “we cannot hold recognition by the representative body that elects a deputy as a precondition for the above deputy's authority... This would contradict the very democratic core of the popular representation institution.”<sup>5</sup>

It should be noted that Polish legislation provides for just one circumstance that allows prolonging the Sejm's and the Senate's term of office. Namely, pursuant to the Constitution, “during a period of introduction of extraordinary measures, as well as within the period of 90 days following its termination, the term of office of the Sejm may not be shortened, nor may a nationwide referendum, nor elections to the Sejm, Senate, organs of local government nor elections for the Presidency be held, and the term of office of such organs shall be appropriately prolonged”. For this purpose, the regulation defines extraordinary measures as martial law, a state of emergency or a state of a natural disaster.

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5 Bezuglov, A.A. Sovetsky deputy. State and legal status / A.A. Bezuglov. – M.: Yurid. lit, 1971. – 221 pp., p. 23-25.

The constitutional provision of the Republic of Belarus (Article 93) sets the following procedure for the Chambers of the Parliament to start work. The first session of Parliament after the elections is called by the Central Commission of the Republic of Belarus on Elections and National Referenda and is convened no later than 30 days after the elections. It should be noted that the order of recognizing the authority of people's deputies in the Republic of Belarus is related to a special procedure set by the Parliament chambers' regulations.

The first sitting of the newly elected Sejm takes place when summoned by the Polish President in accordance with the set procedure. Thus, the Senior Marshal appointed by the President out of the oldest deputies, opens the first sitting of the Lower Chamber. We consider it noteworthy that before the commencement of the performance of the mandate at the first sitting of the Sejm, deputies take the following oath in the presence of the Sejm: "I do solemnly swear to perform my duties to the Nation diligently and conscientiously, to safeguard the sovereignty and interests of the State, to do all within my power for the prosperity of the Homeland and the well-being of its citizens, and to observe the Constitution and other laws of the Republic of Poland". The oath may also be taken with the additional sentence "So help me, God". The deputy's oath taking procedure and the election of the Marshal of the Sejm are held by the Senior Marshal. Deputies who missed the sitting of the Sejm as well as those who were granted their mandates during the Parliament's term of office take the deputy's oath at the first sitting they attend. The deputies having taken their oaths, the Senior Marshal holds the Marshal of the Sejm's election. Having been elected by the absolute majority roll-call vote, the Marshal of the Sejm takes the chair.

We believe that legitimization of the regulation requiring Belarusian MPs to take an oath at the first sitting of each Chamber of the Parliament as well to secure their performance efficiency would logically wrap up the formal recognition of their mandates. We suppose that the oath may be taken in the presence of the Central Commission of the Republic of Belarus on Elections and National Referenda represented by its Chairperson.

As for the grounds for terminating MPs' powers, we find it interesting to consider in the framework of legal theory the view of a Russian researcher L.A. Nudnenko, who believes that "deputies' mandates may be terminated as a result of expiry or premature termination. A deputy's mandate expires regardless of the deputy's will or awareness"<sup>6</sup>. The author states that deputies' mandates expire at the end of the state legislative body's term of office and therefore defines the following grounds for terminating deputies' mandates: deputy's death; court decision declaring the citizen elected as a deputy missing or deceased pursuant to a court resolution in force; court decision declaring the citizen elected as a deputy fully or partially incapacitated<sup>6</sup>. However innovative this approach might be, we do not think it necessary to isolate the term "expiry" in relation to a deputy's mandate as unique. We believe that the loss of a deputy's mandate as a result of its expiry and premature termination should be united under a common theoretical and legal category "termination" in relation to the said person's mandate as, according to the formal logic rules, the above definition includes the terms "expiry" and "premature termination" of a parliamentary mandate. Meanwhile, we believe that the grounds for MP's powers termination may be divided into two types.

Thus, in the first case the mandate is terminated pursuant to the expiration of the constitutional term of the said person's authority.

As we have said above, both Polish and Belarusian parliamentary mandates last for four years. The term depends on the respective Parliaments' legislature and is set by the Constitution. Note that the provision that determines the interval between Parliamentary elections corresponds to Protocol №1 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. This demonstrates the adherence of the countries in question to the generally recognized rules of the international law. As A.A. Bezuglov rightly says, a deputy's term of office cannot be too short as this does not allow the deputy to acquire the practical skills required "for state management". Besides, too frequent renewal of representative bodies hinders

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6 Nudnenko, L.A. Constitutional legal status of the deputy of the legislature governmental body in the Russian Federation/ L. A. Nudnenko. – SPb.: Yurid. Press center, 2004. – 473 pp, p. 149-150.

their performance <sup>7</sup>. We believe that the Constitutions set the best possible terms of office for Polish and Belarusian Members of Parliament as at the current stage of Polish parliamentary system development as well as when deputies to the House of Representatives perform their parliamentary duties professionally (unless the Constitution of the Republic of Belarus provides otherwise) and Members of the Council of the Republic – professionally or in off-work (off-service) hours the legislative body's term of office should be quite lengthy (4 – 6 years).

In the second case a parliamentary mandate is terminated, as we see it, due to premature termination of MPs' powers as well as in case of premature termination (dissolution) of the Parliament chambers, which we consider an exception from the above rule.

Note that pursuant to the framework Law <sup>8</sup>, the authority of a deputy to the House of Representatives or a Member of the Council of the Republic is prematurely terminated by the decision of the respective chambers: 1) if the deputy to the House of Representatives or the Member of the Council of the Republic is elected or appointed to a post incompatible with performing the duties of a deputy to the House of Representatives or a Member of the Council of the Republic pursuant to the Constitution of the Republic of Belarus and the framework Law; 2) if the deputy to the House of Representatives or the Member of the Council of the Republic files a petition to resign for health reasons or because of other circumstances that prevent them from doing their duty; 3) if they are declared fully or partially incapacitated by the court; 4) if a deputy to the newly elected House of Representatives refuses to quit their job within three months and start professional work at the House of Representatives; 5) if the elections or the powers of certain deputies to the House of Representatives or Members of the Council of the Republic are held invalid; 6) if there is a conviction in force brought in by the Supreme Court of the Republic of Belarus concerning the person who is a deputy to the House of Representatives or the Member of the Council of the Republic; 7) if Belarusian citizenship is renounced; 8) if a deputy to the House

<sup>7</sup> Bezuglov, A.A. Sovetsky deputy. State and legal status / A.A. Bezuglov. – M.: Yurid. lit, 1971. – 221 pp., p. 20.

<sup>8</sup> About the status of the deputy of the House of Representatives, member of Council of the Republic of the National Assembly of Republic of Belarus: Law of Republic Belarus, 04. 11.1998, No. 196-Z: in an edition. Law of Republic Belarus of 17.07.2018.

of Representatives or the Member of the Council of the Republic is recalled; 9) if the obligation provided for by Section 9 Article 6 of this framework Law has not been signed; 10) if there is a resignation notice written by the deputy to the House of Representatives or the Member of the Council of the Republic for personal reasons.

The last of the listed above grounds for premature termination of MPs' powers makes us pay special attention to the fair point made by a Russian researcher A.A. Bezuglov, who discusses the issue of premature termination of MPs' powers to emphasise "how easy it is for them to do it at will: it's enough to write a resignation notice, ... join the management board of a corporation or another business entity, become an entrepreneur"<sup>9</sup>. This is a topical issue for any state (including Belarus and Poland) – the complicated procedure of acquiring a parliamentary mandate that involves overcoming a number of challenges, both financial and political, is quite a typical one and important for every state. The state budget funds allocated for the election of the "failing" Member of Parliament might have been spent much more efficiently on, for example, maternity and child welfare, which would definitely be in line with the social policy of our country. Therefore, we consider it reasonable to oblige Belarusian Members of Parliament who wish to prematurely terminate their duties for the above reason to pay a standard monetary compensation into the national budget to cover the expenses incurred by the Belarusian state for his / her election campaigning. This measure will secure the best possible goal-oriented allocation of funds raised from Belarusian taxpayers, which is crucial for a democratic state of law. Thus, we think it necessary to introduce a corresponding amendment to Article 8 of the existing framework Law.

Besides, it makes sense to review the previous ground for premature termination of MPs' powers, when there is a conviction in force brought in by the Supreme Court of the Republic of Belarus concerning him / her. We believe that to secure the best possible performance of Belarusian Parliament premature termination of MPs' powers makes sense only when there is a conviction concerning the said Member of Parliament and brought in by the Supreme Court of the Republic of Belarus that entails community

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<sup>9</sup> Bezuglov, A.A. Constitutional law of Russia / A.A. Bezuglov, S.A. Soldatov. – M.: Professional education, 2001. – Tom. 2. – 831 pp., p. 648-649.



service, imprisonment, restriction or deprivation of liberty, life sentence or capital punishment as well as denial of right to hold certain positions or perform certain activities (we consider these types of punishment incompatible with efficient parliamentary performance), but not all kinds of convictions brought in by the above court.

Besides, the framework Law states that the authority of professional Members of Belarusian Parliament may also be terminated by the corresponding chamber of Parliament in case of failure to submit an income and owned property return or deliberate presentation of incomplete or false information; failure to meet the restrictions set in Sections 4 – 6 Article 6 of the said Law.

In case of premature termination (dissolution) of the House of Representatives or the Council of the Republic as well as in case a deputy to the House of Representatives or the Member of the Council of the Republic dies, their authority is terminated without a resolution of the corresponding chamber of the National Assembly of the Republic of Belarus. The President of the Republic of Belarus makes decisions on premature termination of the National Assembly chambers within two months after seeking official advice from the chairs of the National Assembly chambers.

In view of the above, it is important to emphasize that Belarusian legislation provides for a number of situations that make it impossible to dissolve the chambers of the National Assembly of the Republic of Belarus: a state of emergency or martial law; in the last six months of the President's term of office; in the course of proceedings of both chambers of the National Assembly on the premature resignation or removal of the President from office; in the course of the first year since the first sittings were held.

We believe that the current list of grounds for premature termination of Belarusian people's representatives' authority could be a bit more extensive. In particular, to enhance the performance of Belarusian Members of Parliament the above list may be supplemented with several other grounds, for example: the MP leaving the country for permanent residence abroad; voluntary dissolution of the House of Representatives or the Council of the Republic of the National Assembly of the Republic of Belarus and some others.

It should be noted that in some foreign countries a political party may initiate premature termination of powers if the deputy no longer belongs to the party that elected him / her <sup>10</sup>. We believe that this statutory regulation is inefficient as it entails substantial restrictions for the Member of Parliament as a representative. Belarusian legislation does not contain such a ground.

The list of premature termination grounds laid down by the Polish legislation does not contain the above case either. This list is less extensive than the Belarusian one and sets the following grounds for premature termination of a Polish National Assembly mandate.

In particular, national legislation provides for premature termination of a Sejm's deputy's mandate on the grounds of a refusal or failure of the said delegate to take the oath. If such a thing happens, the Marshal of the Lower Chamber of the Parliament, having consulted the Operating Procedure and Deputy Affairs Commission, decides on approving the premature termination of the failing deputy's mandate as well as on the substitution of the surrendered mandate and formulates it as a resolution to be published in the Official Bulletin of the Polish Republic "Monitor Polski".

It looks like the above list of grounds for premature termination of a Polish National Assembly mandate should be supplemented with one more ground: unreasonable failure of the Sejm's deputy or a member to attend a certain number of sittings of the corresponding chamber of the Polish Parliament. This ground for premature termination of a representative's mandate as a form of certain political responsibility of a given elected politician, as we see it, would make his professional performance most efficient.

In view of the above let's note that this legal rule is in no way the only reason for premature termination of a Polish MP's authority.

The regulatory body of Poland also sets the rule that the dissolution of the Parliament chambers may become the ground for premature termination of a Sejm's deputy or a member of the Senate. In particular, the Sejm may shorten its term of office by a resolution passed by a majority of at least two-thirds of the votes

<sup>10</sup> Krylova, N.S. The constitutional models of legislature / N.S. Krylova // in book: Comparative constitutional law: – M, 2002., p. 327.

of the statutory number of deputies. It is important to note that any shortening of the term of office of the Sejm shall simultaneously mean a shortening of the term of office of the Senate.

Polish legislation provides for one more ground for premature termination of the Polish Parliament chamber's authority and, consequently, the mandates of its members. Thus, the President, after seeking the opinion of the Marshal of the Sejm and the Marshal of the Senate, may, in those instances specified in the Constitution (Articles 155, 225), order shortening of the Sejm's term of office.

In particular, pursuant to Article 155 of the Constitution, in the event that a Council of Ministers has not been appointed pursuant to the provisions of Article 154, para. 3, the President of the Republic within a period of 14 days appoints a Prime Minister and, on his application, other members of the Council of Ministers and accepts their oath of office. The Sejm, within 14 days following the appointment of the Council of Ministers by the President of the Republic, holds, in the presence of at least half of the statutory number of Deputies, a vote of confidence thereto. In the event that a vote of confidence has not been granted to the Council of Ministers pursuant to para. 1, the President of the Republic shortens the term of office of the Sejm and orders elections to be held. Pursuant to Article 225 of the Polish Constitution, if, after 4 months from the day of submission of a draft budget to the Sejm, it has not been presented to the President of the Republic for signature, the President of the Republic may, within the following of 14 days, order the shortening of the Sejm's term of office.

Similar to the previous situation, whenever the term of office of the Sejm has been shortened by the Polish President, then the term of office of the Upper Chamber is also shortened. In addition, having issued such an order, the Head of the Polish state has to simultaneously order elections to the Sejm and the Senate, and order them to be held on a day falling no later than within the 45-day period from the day of the official announcement of Presidential order on the shortening of the Sejm's term of office as well as summon the first sitting of the newly elected Sejm no later than the 15<sup>th</sup> day after the day on which the elections were held. Note that the full list of the grounds for terminating a Sejm's deputy's mandate or that of a member of the Polish Senate is set by Article 213 of the Polish Law of 12 April 2001.

## CONCLUSIONS

Thus, analysing the regulatory origin of the grounds for granting and terminating mandates of the Sejm's deputies and Senators set by the legislative bodies of the states in question and comparing them to the similar legal categories applied to the status structures of deputies to the House of Representatives and Members of the Council of the Republic, we find both similar and different features of these powers. A large number of similar legislative provisions (which prevail) is related to their essence (details) and, as we see it, preconditioned mainly by the common origin of the Polish and Belarusian parliamentary institution. Their main point is that the grounds for granting and terminating parliamentary mandates, as an integral element of their legal status, set the time frame for exercising the authority of both Polish and Belarusian Members of Parliament. The existing differences between the above legal categories manifest themselves, first and foremost, in their formal expression – the implementation procedure.

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