



COUNTRY REPORT: POLAND

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I. How has parliamentary law-making practice changed during the pandemic in the state you are studying?

- **Briefly describe the new practices.**
- **Evaluate these practices. In your opinion, do these practices empower, disempower or not change anything regarding parliamentary law-making powers and practice?**

The main change in the field of law-making is an introduction of online (and hybrid) meetings of Parliament. It is a result of amendments to the Rules of the Sejm² introduced in March 2020 according to ‘old’ (offline) rules of procedure.³ They were supposed to remain in force for 3 months, but in June 2020 the sunset clause was removed from the act. Similar changes were introduced in the Senate much later – in June 2020.⁴ Such a delay in the context of pandemic basically meant that Senate was ‘closed’ to the outside world. There was a debate on whether the introduction of a hybrid meeting is acceptable in the light of the wording of the Constitution.⁵

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² *Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 26 marca 2020 r. w sprawie zmiany Regulaminu Sejmu Rzeczypospolitej Polskiej.* Also a ‘technical’ regulation was adopted by the Speaker of Sejm (*zarządzenia nr 6 marszałka Sejmu z 27 marca 2020 r. w sprawie środków komunikacji elektronicznej umożliwiających porozumiewanie się na odległość udostępnianych posłom oraz innym uprawnionym do uczestniczenia w posiedzeniu Sejmu*).

³ M. Serowaniec, Z. Witkowski (2020) Can legislative standards be subject to ‘quarantine’? The functioning of the Tablet Sejm in Poland in the COVID-19 era, *The Theory and Practice of Legislation*, 8:1-2, 155-170.

⁴ *Uchwała Senatu Rzeczypospolitej Polskiej z dnia 4 czerwca 2020 r. w sprawie zmiany Regulaminu Senatu.*

⁵ J. Szymanek, *Opinia o zgodności z Konstytucją RP projektu zmiany Regulaminu Sejmu przedstawionego w druku nr 286 wraz z autopoprawką*, BAS-WASIE-650/20; B. Przywora, *Opinia prawna w sprawie zgodności z Konstytucją Rzeczypospolitej Polskiej z 2 kwietnia 1997 r. wprowadzenia unormowań umożliwiających odbywanie Sejmu, komisji lub podkomisji z wykorzystaniem środków komunikacji elektronicznej, umożliwiających porozumiewanie się na odległość*, BAS-WAP-650/20; P. Sobolewski, *W sprawie dopuszczalności zmiany regulaminu Sejmu w celu zapewnienia możliwości odbywania posiedzeń Sejmu z wykorzystaniem elektronicznych środków porozumiewania się na odległość*, *Przegląd Sejmowy* nr 3(158)/2020, s. 208–235; J. Roszkiewicz, *O dopuszczalności zdalnego*

The decision to organize a hybrid meeting is taken by the Speaker of the Sejm and can apply to both plenary sessions of the Sejm and the meetings of the commissions. Some of the MPs as well as public commentators expressed their concerns regarding possible future mistakes or even intentional abuse of the new system. It is primarily a consequence of (pre-pandemic) high political polarization in Poland. Some mistakes with the voting results were however diagnosed,⁶ as well as cases when MPs participated in the hybrid Sejm meetings from abroad, which is prohibited.⁷ Hybrid meetings also involved some technical problems.⁸ In such a case it is possible to submit a statement to the chairman of the commission or to the Speaker of the Sejm, which in practice does not change the results of voting.

Remote/hybrid meetings do not restrict rights of the MPs, but rather introduce some technological challenges.⁹ For instance hybrid meetings may involve limited contact with the person presiding over the commission – she/he decides who can take the floor and for how long. On a practical level, hybrid meetings can be a challenge to remain focused for longer periods of time. However, hybrid meetings increase the number of MPs taking part in a session. It creates a presumption that if the unstable ruling majority wants to win an important vote, then a hybrid session will be organised. It also seems that hybrid meetings increased the quality of MPs statements (online meetings are apparently able to cool down political emotions). Due to COVID rules, physical access of non-MPs to the building of the Sejm is severely limited, which may affect the participation of the third sector in the legislative process. Furthermore, parliamentary teams (*zespoły parlamentarne*) were not entitled to meet in person.

głosowania w Sejmie na podstawie Konstytucji RP z 1997 r., P. Sejmowy [https://orka.sejm.gov.pl/przeglad.nsf/0/4DC9CF04A9F03CBCC125871C006C5F53/\\$file/05_PS_3\(164\)2021.pdf](https://orka.sejm.gov.pl/przeglad.nsf/0/4DC9CF04A9F03CBCC125871C006C5F53/$file/05_PS_3(164)2021.pdf);
M. Wiszowaty, *Opinia prawna na temat zgodności przepisów zawartych w projekcie uchwały w sprawie zmiany Regulaminu Senatu (druk nr 97) z przepisami Konstytucji RP* - <https://www.senat.gov.pl/gfx/senat/pl/senatekspertyzy/5529/plik/oe-297.pdf>.

6 *System zawiódł? PO twierdzi, że głosy nie zostały wliczone. Budka: Nie wiemy, czy wyniki są prawidłowe*, Gazeta.pl 28 March 2020 – <https://wiadomosci.gazeta.pl/wiadomosci/7,173952,25827404,system-zawiodl-po-twierdzi-ze-glosy-nie-zostaly-wliczone.html>.

7 T. Żółciak, *Prawo w Sejmie łamane zdalnie. Reakcji raczej nie będzie*, Dziennik Gazeta Prawna 25 August 2020 - <https://www.gazetaprawna.pl/wiadomosci/artykuly/1489171,sejm-zdalne-glosowanie-zagranica-poslowie-cis.html>.

8 M. Serowaniec, Z. Witkowski (2020) Can legislative standards be subject to ‘quarantine’? The functioning of the Tablet Sejm in Poland in the COVID-19 era, *The Theory and Practice of Legislation*, 8:1-2, 155-170 (p. 161).

9 M. Serowaniec, Z. Witkowski (2020) Can legislative standards be subject to ‘quarantine’? The functioning of the Tablet Sejm in Poland in the COVID-19 era, *The Theory and Practice of Legislation*, 8:1-2, 155-170 (p. 161).

COVID legislation constituted a minority of adopted legal acts. According to the research, approximately 16% of draft laws, reports and information presented or discussed in the Sejm dealt with the consequences of the COVID pandemic.¹⁰ However the scope of the COVID legislation was very broad and covered numerous matters, sometimes not related to the problem of the pandemic. COVID legislation became an opportunity to submit and pass non-COVID issues. It has been argued that the COVID legislation constitutes ‘omnibus legislation’.¹¹ It remains quite a common practice that amendments to the draft proposal discussed during the meeting of the commission are in fact being prepared by the government but formally presented by MPs. The length of such complex amendments often do not allow evaluation of such a proposal during one meeting of the commission. Most of the COVID draft acts (52%) were submitted as private bills and not by the government,¹² who is obliged to conduct public consultations. But even those submitted by government did not have any proof of having been consulted.¹³

The COVID legislation acts were understandably usually adopted in an accelerated mode. Accelerated mode of the legislative process in the parliament makes it difficult to participate in the debate substantially, both for MPs and non-government organisations.¹⁴ On average, in 2020 it took 25 days to adopt a statutory act dealing with the pandemic.¹⁵ In 2020 it took 2 days for the President to analyse and decide whether the COVID acts should be signed. However, as the European Commission’s annual rule of law report has underlined, ‘the expedited adoption of legislation continues to be used, also beyond issues linked to the COVID-19 pandemic, including for structural reforms of the judiciary, with no or limited consultation of stakeholders’.¹⁶

Numerous COVID restrictions were introduced with the executive regulations despite the fact that they were introducing limitations to rights and freedoms, which require a statutory act. New restrictions were usually announced at press conferences by the representative of

10 *Barometr stabilności otoczenia prawnego w polskiej gospodarce*, Grant Thornton 2021; M. Lewandowska, Michał Dahl, COVID-19 a proces legislacyjny – posiedzenia Sejmu Rzeczypospolitej Polskiej IX kadencji, *Przegląd Prawa Konstytucyjnego* Nr 5 (63)/2021 (p. 148-149).

11 A. Bień-Kacała (2021) Legislation in Illiberal Poland, *The Theory and Practice of Legislation*, 9:3, 276-294 (p. 291).

12 *Barometr stabilności otoczenia prawnego w polskiej gospodarce*, Grant Thornton 2021.

13 Report of *Obywatelskie Forum Legislacji* (Batory Foundation) (forthcoming).

14 A. Bień-Kacała (2021) Legislation in Illiberal Poland, *The Theory and Practice of Legislation*, 9:3, 276-294 (p. 286).

15 *Barometr stabilności otoczenia prawnego w polskiej gospodarce*, Grant Thornton 2021.

16 2021 Rule of Law Report. Country Chapter on the rule of law situation in Poland, Brussels, 20.7.2021, SWD(2021) 722 final, p. 1.

the government and then the executive regulation was promulgated, which tried to implement the announcements made at the press conference. *Vacatio legis* was usually very short.¹⁷

The role of the Senate has changed in recent years due to the majority of members being affiliated with opposition parties. The Senate usually debates the statutes within their time limits (30 days) and does not accept immediately as was the case in the previous term. There are more consultations being organized by the Senate.¹⁸ In 2020, the Senate proposed amendments to 72% of statutes adopted by the Sejm.¹⁹

Limited transparency is one of the major challenges resulting from pandemic. In connection with the pre-pandemic tendency of ‘accelerated’ legislation mode, limited transparency creates a real threat to civic participation in the legislative process. Citizens “[i]nstead of being an active participant, they are passive – legislation is done to them, rather than them being involved in its making”.²⁰ The overall changes in the rule of law situation in Poland is an important factor in this change (see point II).

II. Looking at formal changes and the practice of law-making in the state you are studying, has respect for the rule of law increased, decreased or not changed at all during the pandemic? Please elaborate on the question.

The ongoing legal and political debate about the rule of law crisis in the EU provides strong evidence that the rule of law in Poland is facing radical backsliding. The overall score in the World Justice Project has dropped from 0.71 (in 2015) to 0.64 (in 2021).²¹ The V-Dem 2021 report has listed Poland as the most autocratizing country in 2010–2020 and changed its status from ‘liberal democracy’ to ‘electoral democracy’.²² Assaults on judicial independence led to what is known as the Article 7 TEU procedure being initiated against Poland in

17 K. Koźmiński, M. Jabłoński, Koronawirus: legislacja w dobie pandemii, rp.pl 9 May 2020 <https://www.rp.pl/opinie-prawne/art730711-koronawirus-legislacja-w-dobie-pandemii>.

18 <https://www.senat.gov.pl/prace/konsultacje-i-wysluchania/konsultacje/>

19 *Barometr stabilności otoczenia prawnego w polskiej gospodarce*, Grant Thornton 2021.

20 T. Drinóczi, R. Cormacain, Introduction: illiberal tendencies in law-making, *The Theory and Practice of Legislation* 2021, vol. 9, no. 3, 269–275.

21 Poland Overall Score, 2021 – <https://worldjusticeproject.org/rule-of-law-index/country/2021/Poland/>.

22 Autocratization Turns Viral. *Democracy Report 2021*, V-Dem Institute, p. 19.

December 2017.²³ The annual rule of law report adopted by the European Commission underlined that in Poland contested legislation was adopted “through expedited legislative procedures with limited consultation of stakeholders or opportunities for the opposition to play its role in the law-making process”.²⁴ Within what is known as the European Semester, adopted in 2020, the European Commission stressed that “recent developments raise further concerns”.²⁵

The main reason for this backsliding in Poland is a lack of effective constitutional judicial review. The Constitutional Tribunal in Poland has been captured by the ruling majority and does not truly control the adopted legislation – neither on merit nor from a procedural perspective. Bad legislative practices that occur in the Parliament (e.g. lack of consultations, accelerated legislative procedure or violation of the Rules of the Sejm) are not being tackled by the Tribunal, which gradually worsens the quality of the legislative process. It undermines the functions of Parliament and the legislative process – instead of being a platform of inclusive public debate, it becomes limited to technical activity where the mathematical majority of votes is gathered. These practices lead to the ‘majoritarian vision of democracy’.²⁶

Important institutional developments can be however detected in the Senate, where the opposition political parties have a slight majority. Senate established two entities that deal with the rule of law issues. The first is the Rule of Law Parliamentary Team (*Parlamentarny Zespół Obrony Praworządności*).²⁷ The team consists of MPs and Senators, but does not have any formal legislative powers. Nevertheless, the Team quite often discusses the legislative proposals that raise rule of law concerns. Unfortunately, it sometimes doubles the work that is being done by the Senate commissions. The second body established by the Marshal of Senate (in January 2020) is a Team of Advisors for the Control of the Constitutionality of the Law (*Zespół Doradców ds. kontroli konstytucyjności prawa przy Marszałku Senatu Rzeczypospolitej Polskiej X kadencji*). The team prepares legal analysis

23 Proposal for a COUNCIL DECISION on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, COM/2017/0835 final - 2017/0360 (NLE).

24 2020 Rule of Law Report. Country Chapter on the rule of law situation in Poland, Brussels, 30.9.2020, SWD(2020) 320 final, p. 1.

25 Recommendation for a COUNCIL RECOMMENDATION on the 2020 National Reform Programme of Poland and delivering a Council opinion on the 2020 Convergence Programme of Poland, 8440/20, Brussels, 8 June 2020,

26 Agnieszka Bień-Kacała (2021) Legislation in Illiberal Poland, *The Theory and Practice of Legislation*, 9:3, 276-294 (p. 286).

27 <https://www.senat.gov.pl/sklad/zespoły/parlamentarny,172,parlamentarny-zespol-obrony-praworzadnosci.html>

(on request of the Marshall of Senate) whether acts adopted by the Sejm and transferred to the Senate are compatible with the Constitution. However, the team's expert opinions deal with broader topics, such as irregularities with presidential elections in 2020, and what is known as the abortion 'ruling' of the CT of October 2020. It seems that the main idea for establishing the team was to 'substitute' the CT.

Annex 1: Formal changes

Country	Legal act changing formal rules of law-making (in original language)	Chamber concerned (in original language)	Short description of the content of the reform (in English)	Which year? 2019, 2020 or 2021
Poland	UCHWAŁA SEJMU RZECZYPOSPOLITEJ POLSKIEJ z dnia 26 marca 2020 r. w sprawie zmiany Regulaminu Sejmu Rzeczypospolitej Polskiej	Sejm	Introduces new procedure in Sejm (applicable to plenary, committee and subcommittee meetings): "Meetings with the use of electronic means of communication enabling communication at a distance"	2020
	UCHWAŁA SEJMU RZECZYPOSPOLITEJ POLSKIEJ z dnia 19 czerwca 2020 r. zmieniająca uchwałę w sprawie zmiany Regulaminu Sejmu Rzeczypospolitej Polskiej	Sejm	Sunset clause of the resolution 26 March 2020 (Article 2) was repealed	2020
	UCHWAŁA SEJMU RZECZYPOSPOLITEJ POLSKIEJ z dnia 28 maja 2020 r. w sprawie zmiany Regulaminu Sejmu Rzeczypospolitej Polskiej	Sejm	Regulates the election of pedophilia commission's members	2020
	UCHWAŁA SEJMU RZECZYPOSPOLITEJ POLSKIEJ z dnia 24 czerwca 2021 r. w sprawie zmiany Regulaminu Sejmu Rzeczypospolitej Polskiej	Sejm	Minor procedural changes dealing with 'remote meetings'	2021
	UCHWAŁA SEJMU RZECZYPOSPOLITEJ POLSKIEJ z dnia 29 września 2021 r. w sprawie zmiany Regulaminu Sejmu Rzeczypospolitej Polskiej	Sejm	Proceedings concerning state of emergency	2021
	Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 29 października 2021 r. w sprawie zmiany Regulaminu Sejmu Rzeczypospolitej Polskiej	Sejm	Powers of Presidium of Sejm	2021
	UCHWAŁA SENATU RZECZYPOSPOLITEJ POLSKIEJ z dnia 13 marca 2020 r. w sprawie zmiany Regulaminu Senatu	Senat	Legislative process - first reading of the statute – shortening the deadlines	2020
	UCHWAŁA SENATU RZECZYPOSPOLITEJ POLSKIEJ z dnia 4 czerwca 2020 r. w sprawie zmiany Regulaminu Senatu	Senat	Procedure of dismissing Marshal of Senate	2020
	UCHWAŁA SENATU RZECZYPOSPOLITEJ POLSKIEJ z dnia 4 czerwca 2020 r. w sprawie zmiany Regulaminu Senatu	Senat	'Remote meetings' were introduced	2020
	UCHWAŁA SENATU RZECZYPOSPOLITEJ POLSKIEJ z dnia 3 grudnia 2020 r. w sprawie zmiany Regulaminu Senatu	Senat	'Remote meetings'	2020

Annex 2: Law-making practice

Country	Chamber concerned (in original language)	Year	Number of ALL legislative bills	Number of resolutions/decisions/state ments (various non- legislative measures)	Number of fast-tracked legislation (debate limited and/or shortened legislative process, including omnibus laws)	Most common forms of fast- track measures	Number of gov decisions (no parliamentary consent)	Number of working days (parliament)	Number of oral questions to the government (<i>pytania w sprawach bieżących</i>)	Number of written questions (<i>interpelacje</i>)	Number of written questions (<i>zapytania poselskie</i>)		
Poland	Sejm	2019	8 th term	231 submitted (198 adopted)	68	0 submitted	Time limits for the whole procedure (and at each stage); limitation of new amendments to the bill at the stage of the second reading	32	109	5496	1748		
			9 th term	61 submitted (10 adopted)	28	1 submitted		7	11	1168	111		
		2020	248 submitted (133 adopted)	63	3 submitted (2 adopted)	1633		53	138	15988	2230		
			2021	290 submitted (189 adopted)	78	8 submitted (8 adopted)		1607	48	172	12842	2344	
		2019	9 th term	196 submitted (197 decided)	250 resolutions (including 197 legislative resolutions)	0 submitted		Senat has 14 days to adopt the decision regarding the 'urgent' bill.	N/A	30	N/A	N/A	N/A
				2020	10 th term	7 submitted			21	7 submitted	4		
131 submitted (131 decided)	214					47							
2021	191 submitted (191 decided)	275		37									