

The Legislative Power

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ABSTRACT

In this chapter, we present the legislative branches of eight countries (Poland, Czech Republic, Slovakia, Romania, Serbia, Croatia, Slovenia and Hungary) through the following subjects: a) legislative bodies and sources of parliamentary law (laws regulating the function of the parliament, bylaws etc.); b) the authorities of parliaments; c) the officeholders of parliaments, the house president, and committees of parliaments; d) parliamentary groups; e) the legal status of officeholders (rights of the MPs, conflict of interest, immunity).

The structure of the study follows the order of the above-mentioned subjects and treats them as sub-chapters. At the beginning of each subchapter is a short explanation of the subject, highlighting in broad terms what it wishes to showcase. The study focuses on the legislative branches of governments as the main goal of the study is to observe their legislative ecosystem and organs, powers and members.

KEYWORDS

legislative bodies, branches of power, standing orders, committees, office holders, parliamentary groups.

1. Legislative bodies and their sources of parliamentary law

The first subchapter briefly examines the kind of sources from which legislative bodies draw their powers and their place within the broader systems of government of the eight countries analysed.

These legislative bodies are the bicameral Polish parliament, made up of the Sejm and Senate; the Chamber of Deputies and the Senate in the Czech Republic; the National Council in Slovakia; the Chamber of Deputies and the Senate in Romania; the National Assembly of Serbia; the Croatian parliament; the National Assembly of Slovenia; and the National Assembly of Hungary.

The primary and most fundamental level of legislation is the same for each country: the constitution.

The constitutions of the observed countries all declare their parliaments as the legislative power; however, major differences exist in these declarations as some are unicameral and others are bicameral, with one notable exception, which we will

briefly address. The constitutions of the countries where the parliament is bicameral (Poland, Czech Republic and Romania) name both chambers of parliament as the legislative powers, although their specific tasks and competencies vary. In countries where the parliament is unicameral (Slovakia, Serbia, Croatia and Hungary), an adjective such as ‘sole’ or ‘supreme’ is added to the declaration to emphasise that the named organ is the singular legislative power – even if ‘supreme’ does not necessarily imply that on its own. The notable exception previously mentioned is Slovenia, where the structure of parliament is a so-called ‘incomplete bicameral system’, meaning that while it technically has two chambers, only one – in this case the National Assembly – is vested with legislative powers, while the second chamber – the National Council – is made up of local representatives and various other functional bodies.¹

Apart from national constitutions, the sources for parliamentary law also include the internal rules of parliaments. The observed countries chose different methods of regulating their own parliaments, with three main ones observable.

The first general method is that the internal rules are on a lower level in the legislative hierarchy than laws. Examples of this method are Poland, Romania, Croatia² and Slovenia, with the types of legislation being named either resolution,³ decision,⁴ standing orders⁵ or rules of procedure,⁶ respectively. In the case of Poland and Romania (and technically also in Slovenia), both chambers have their own internal rules, but interestingly, for the joint activities of the two chambers, the Romanian parliament makes a separate decision⁷ – a ‘Decision of Parliament (as in a decision of both chambers) – outclassing the separate internal rules.

The second method is that the internal rules are created in the form of laws. Examples of this are the Czech Republic⁸ and Slovakia.⁹ These internal rules are only internal in that they only address the members of parliament as, technically, they are universally binding.

1 Dieringer, Lindstrom and Stuchlik, 2005.

2 In Croatia, this is a result of the interpretation of the Constitutional Court as organic laws are drafted by a majority of all members of Parliament (U-II-1744/2001 from 11 February 2004).

3 Rules and Regulations of the Senate, Resolution of the Senate of the Republic of Poland of 23 November 1990 (hereinafter: Rules and Regulations of the Senate).

The Standing Orders of the Sejm of the Republic of Poland – Resolution of the Sejm of the Republic of Poland of 30 July 1992 (hereinafter: The Standing Orders of the Sejm).

4 Senate Regulation of Romania, approved by Senate Decision no. 28/200 (hereinafter: Senate Regulation); The Regulation of the Chamber of Deputies of Romania, approved by the Decision of the Chamber of Deputies no. 8/1994 (hereinafter: The Regulation of the Chamber of Deputies).

5 The Standing Orders of the Croatian Parliament. Narodne novine nos. 81/13.

6 Rules of Procedure of the National Assembly of Slovenia of 2 April 2002 (PoDZ-1 – Official Gazette of the Republic of Slovenia No. 35/02) (hereinafter: Rules of Procedure Slovenia).

7 Regulation of the joint activities of the Chamber of Deputies and the Senate, approved by the Decision of the Romanian Parliament no. 4/1992.

8 The Standing Rules of the Senate of the Czech Republic – Act No. 107/1999 Coll (hereinafter: The Standing Rules of the Senate); Rules of Procedure of the Chamber of Deputies of the Czech Republic – Act no. 90/1995 Coll. (hereinafter: Rules of Procedure of the Chamber of Deputies).

9 Act of the National Council of the Slovak Republic 350/1996 on Rules of Procedure of the National Council of the Slovak Republic (hereinafter: Rules of Procedure of the National Council).

The third method utilised in Serbia and Hungary combines the first two methods – the internal rules are split in two, and there are both laws on the parliaments alongside their own internal rules. In both cases, these laws¹⁰ establish the fundamental provisions, with the internal rules¹¹ regulating the detailed workflow and procedure of the parliaments.

The place of the legislative bodies of power within the branches of power is addressed in the constitutions of every country. The constitutions of Poland, the Czech Republic, Romania, Serbia, Croatia and Slovenia declare verbatim the separations of powers into executive, judicial and legislative branches, although with slightly differing wording, such as “the system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers” (Poland) or “all state authority emanates from the people; they exercise it through legislative, executive, and judicial bodies” (Czech Republic). The Constitution of Slovakia takes a different approach and names three of its chapters after the branches; the separation of the powers is not explicitly declared either. Almost conversely, the Fundamental Law of Hungary only explicitly declares the principle by which “the functioning of the Hungarian State shall be based on the principle of the division of powers” and does not expand directly on the topic.

2. The authorities of the parliaments

In this subchapter, we briefly examine the competencies of parliaments by focusing mainly on their tasks and functions; a meaningful analysis of the legislative process of each country would necessitate its own study.

The Polish parliament, being bicameral, has its tasks and powers divided and shared between the two houses, although the Sejm, in which control over the executive branch is solely vested, plays a dominant role. The creation of standing, special and investigative committees, the declaration of war and peace and the ability to order nationwide referendums are also competencies of the Sejm. Both the Sejm and the Senate also have the right to adopt their own rules of procedure, and this power is shared if the two chambers act as the National Assembly. The right to introduce legislation is not exclusive to either chamber as a group of at least 100.000 citizens who can vote in the elections of the Sejm also has this right.

In the Czech Republic, the Chamber of Deputies and the Senate constitute the parliament. The two chambers are not symmetric in their functions and powers; however,

10 Law on the National Assembly of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 9/10;

Act XXXVI of 2012 on the National Assembly of Hungary (hereinafter: Act XXXVI of 2012).

11 Rules of Procedure of the National Assembly of Serbia, Official Gazette of the Republic of Serbia, No. 52/10 (hereinafter: Rules of Procedure Serbia).

Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure of the National Assembly of Hungary (hereinafter: Resolution 10/2014. (II. 24.) OGY).

one is not majorly dominant over the other either. The control and supervision of the executive power is vested solely in the Chamber of Deputies. Bills are introduced in the Chamber of Deputies and are submitted to the Senate after approval, where the Senate either adopts, rejects or returns the bill to the Chamber with proposed amendments. Some powers are exclusive competencies of both chambers combined, i.e. the parliament. These powers are the declaration of war, consenting to sending armed forces outside of the Czech Republic, and the ratification of certain specified treaties.

The Slovakian parliament is unicameral, and as such, the National Council does not share its legislative competencies with any other governmental organ. Art. 86 of the Constitution of the Slovak Republic lists, as some of the main tasks of the parliament, the approval of certain treaties; the approval of referendums; the establishment of ministries and other governmental bodies; the monitoring of government activities; the approval of the state budget; the debate on fundamental domestic, international, economic, social and other issues; declarations of war; and the consent to dispatching military forces, among others. Art. 86 is not an exhaustive list of the powers and competencies of the parliament. Other powers include the ability to introduce draft laws (alongside with other state organs), establish committees and have some influence on the president of the Slovak Republic, notably to decide whether or not to prosecute the president for treason.

The Chamber of Deputies and the Senate of Romania make up the legislative branch of power in Romania. The joint sittings of both chambers declare war, appoint and revoke some state authorities, such as the directors of the intelligence services, the Advocate of the People etc. As part of the parliamentary control over the executive powers, the two chambers can – in a joint sitting – carry a motion of censure against the government to withdraw the confidence granted to it. The legislative initiative lies with the government, deputies, senators or at least 100.000 citizens entitled to vote, although the direct initiative of citizens is limited in comparison. It must be noted that the topic of bicamerality of the parliament of Romania has visited the Constitutional Court of Romania on multiple occasions, mainly on the matter of what criteria legislative functions must adhere to in order for the constitutional control of a bicameral system to be effective.¹²

The Constitution of the Republic of Serbia declares the main competencies of the National Assembly, among which are the adoption and amendment of said constitution, changes concerning the borders of Serbia, the ratification of international contracts, calls for referendums, decisions on war and peace, the adoption of the budget of the Republic of Serbia, the election and supervision of the government, and the appointment and dismissal of judges of the constitutional court. Every deputy, the government, assemblies of autonomous provinces and at least 30,000 voters all have the right to propose laws.

12 Apostolache and Apostolache, 2018.

Art. 80 of the Constitution of the Republic of Croatia lists the tasks and powers of the Croatian parliament, examples of these being the decision on the state budget and on war and peace, the adoption of the National Security Strategy and Defence Strategy, calls for referendums, decisions on alterations of the border, the conduction of elections, the supervision of the government's work and the ability to grant amnesty for criminal offences and perform further tasks specified by the constitution. Examples of these further tasks include forming commissions of inquiry or authorising the government to regulate by decree in certain areas that are not specified as exclusive to the parliament.

The National Assembly of Slovenia calls legislative referendums (if the prerequisites are met), declares state of emergency or war, decides on the use of defence forces and orders inquiries into matters of public importance. Any deputy of the National Assembly, the government or at least 5,000 voters have the right of legislative initiative. The National Council is the second chamber in the incomplete bicameral system of the Slovenian parliament and is the representative body for social, economic, professional and local interests. It has very limited legislative power compared to the National Assembly; it can convey its opinion, require inquiries or adopt a so-called 'suspensive veto' on a law before its promulgation as well as propose the passing of laws (but not propose laws itself).¹³ The veto is only suspensive because it can be outvoted by the National Assembly with absolute majority.

Art. 1 para. (2) of the Fundamental Law of Hungary lists the most important powers of the National Assembly, among which are the adoption and amendment of the Fundamental Law of Hungary; the adoption of the central budget; the authorisation of the expression of consent to be bound by international treaties; the election of the president of the republic, the prime minister, members and president of the Constitutional Court, the President of the Curia, the Prosecutor General, the Commissioner for Fundamental Rights; the ability to declare a state of war and to make peace, grant amnesty or exercise further functions and powers laid down in the Fundamental Law or in an act. These further functions are, e.g., the establishment of standing committees and parliamentary groups and the ability to call national referendums. Uniquely, the right of legislative initiative is not regulated in the Fundamental Law but by the internal rules – which list the MPs, parliamentary committees, the government and the president of the republic – instead.¹⁴

In general, the legislative organs of the eight countries tend to have very similar fundamental powers. It is interesting to observe how bicameral parliaments handle the most important powers. In Poland, the Sejm is clearly dominant over the Senate as it is vested with the rights to declare war and to exercise control; in the Czech Republic, the Chamber of Deputies is somewhat dominant as it has the power to exercise control over the government, but declaring war is a competence of both chambers; in Romania, both powers are competencies of the joint sittings. The matter of legislative

13 Rules of Procedure of the National Council of Slovenia, Article 67(1).

14 Resolution 10/2014. (II. 24.) OGY, Article 31(1)–(2).

initiative is also interesting as only half of the observed (Poland, Romania, Serbia, Slovenia) countries declare this right, and although the number of citizens required seems to vary greatly from 5,000 to 100,000 voters, the percentage of population required (~0,0026% for Poland, ~0,0051% for Romania, ~0,0044% for Serbia, ~0,0025% for Slovenia) shows some consistency.

3. The officeholders of parliaments, the house president, and committees of parliaments

In this subchapter, we present the persons and organs in parliaments with extraordinary powers and tasks and briefly analyse the committees of parliaments. We purposefully avoid mentioning parliamentary groups as a separate subchapter is dedicated to that topic.

In Poland, the officeholders of the parliament are named ‘Organs of the Sejm’ and ‘Bodies of the Senate’, with both listing the exact same four types of positions: the Marshal of the Sejm/Senate, The Praesidium of the Sejm/Senate, The Council of Seniors and Sejm/Senate Committees.¹⁵ The marshals of the Sejm and the Senate represent the Sejm/Senate, preside over their sittings, supervise their committees, convene and preside over the sittings of the Praesidium of the Sejm/Senate and Council of Seniors, and in certain scenarios, they shall temporarily discharge the duties of the president of the republic.¹⁶ The Praesidium of the Sejm/Senate – which consists of the respective marshals and vice/deputy marshals – establishes principles and oversees the work of each respective chamber – more precisely the performance of deputies and senators.¹⁷ The standing committees of both chambers are mainly tasked with both examining matters in deliberation by the Sejm/Senate (in the case of the Senate, even on their own initiative) and supervising the chambers.¹⁸ Both house rules list the types of standing committees to be established.

The two chambers of the parliament of the Czech Republic have very similar officials within their houses. The Rules of Procedure of the Chamber of Deputies dedicate two chapters to officials and committees, while the Standing Rules of the Senate combine both organs into one chapter.¹⁹ Both list a presidential position – President of the Chamber of Deputies and President of the Senate – as the leading organs tasked with representing, leading and supervising their own chamber as well

15 Rules and Regulations of the Senate, Article 4; The Standing Orders of the Sejm, Article 9.

16 Rules and Regulations of the Senate, Article 8; The Standing Orders of the Sejm, Article 10.

17 Rules and Regulations of the Senate, Article 9; The Standing Orders of the Sejm, Article 12.

18 Rules and Regulations of the Senate, Article 12, 1–2.; The Standing Orders of the Sejm, Article 17.

19 Rules of Procedure of the Chamber of Deputies, Part Five, Part Six; The Standing Rules of the Senate, Part Four.

as other related powers.²⁰ The President of the Chamber of Deputies convenes joint meetings of the chambers. Both rules of procedures list the vice presidents and committees as the other organs of the chambers. The house rules only list a small number of standing committees, the Senate committees being Committees on Agenda and Procedure, Mandate and Immunities, and the Chamber committees being Committees on Mandate and Immunity, Petitions and Budget, Oversight Committee, Steering Committee, Electoral Committee and the Committee on European Affairs, with both houses retaining the power to create other standing committees.²¹

Part Five of the Rules of Procedure of the National Council of Slovakia regulates the officers and committees of the National Council. The officers are the Speaker of the National Council and the Deputy Speakers of the National Council. The house rules list the powers and tasks of the Speaker, of which some of the most important are representing the National Council, signing the resolutions of the National Council, promulgating laws and performing other tasks authorised by the National Council or provided by law.²² The Deputy Speakers of the National Council direct and organise the National Council in areas authorised by the Speaker and substitute the Speaker, along with further specified tasks in the Rules of Procedure.²³ As specified by these rules, the National Council appoints four standing committees – the Mandate and Immunity Committee, the Committee on the Incompatibility of Functions, the Committee of the National Council on European Affairs and the Constitutional and Legal Affairs Committee – while retaining the power to create more standing committees, if need be.²⁴ The act specifies four main tasks for committees: submitting bills and other recommendations to the National Council, supervising and observing the implementation of laws, considering the principal matters of economic and social development in the Slovak Republic and cooperating with the authorities of public administration.²⁵

The main organs in both chambers of the Romanian parliament are the president (of the Senate/of the Chamber of Deputies), vice presidents, the Standing Bureaus and the committees. The Standing Bureau of each chamber comprises the president, four vice presidents, four secretaries and four quaestors and is tasked in both chambers with deciding, in the case of legislative initiatives, whether to retain, debate and adopt them or to transfer them to the Senate/Chamber of Deputies and with controlling the services of the Senate/Chamber of Deputies, among other things.²⁶ The president of each chamber convenes ordinary and extraordinary sessions, convenes and directs

20 Rules of Procedure of the Chamber of Deputies § 29 (1)–(2); The Standing Rules of the Senate, Section 33 (1)–(2).

21 Rules of Procedure of the Chamber of Deputies § 29 (1)–(2); The Standing Rules of the Senate Section 36 (1).

22 Rules of Procedure of the National Council, Section 43 (2).

23 Rules of Procedure of the National Council, Section 44.

24 Rules of Procedure of the National Council, Section 45(1)–(2).

25 Rules of Procedure of the National Council, Section 45(3).

26 Senate Regulation, Chapter I, Section 3 Article 35 (1); The Regulation of the Chamber of Deputies, Chapter I, Section 4 Article 32(1).

the work/meetings of the Standing Bureau, represents the Senate/Chamber of Deputies and fulfils any other task provided by the law, by the house rules or by decision of the Senate/Chamber of Deputies.²⁷ If the presidency of Romania is vacant, the President of the Senate or the President of the Chamber of Deputies – in this order – shall fulfil the interim position. In both chambers, the committees' main task is to prepare the legislative activity and the exercise of parliamentary control.²⁸ Both house rules list the standing committees and leave the option to establish committees of inquiry or special committees, such as joint committees of the two chambers, open.²⁹

According to both the Law on the National Assembly of the Republic of Serbia and its Rules of Procedure, the officers and organs of the parliament are the Speaker, the Deputy Speakers and the Collegium of the National Assembly, along with working bodies – standing working bodies are the committees, ad-hoc working bodies are inquiry committees and commissions.³⁰ The Speaker represents the National Assembly, convenes and chairs the sessions of the National Assembly and the Collegium and ensures the application of the house rules, among other tasks.³¹ The Deputy Speakers assist or substitute the Speaker.³² The Collegium of the National Assembly consists of the Speaker, the Deputy Speakers and the heads of parliamentary groups and is tasked with coordinating the work of the National Assembly as well as aiding the Speaker in representing, convening and determining the agenda of the National Assembly.³³ The committees are mainly established for the consideration of submitted bills and other acts, review of policies pursued by the government as well as the supervision of the government.³⁴ The standing Committees of the National Assembly are listed in Art. 46 of the Rules of Procedure of the National Assembly.

The Standing Orders of the Croatian Parliament name the Speaker of Parliament, Deputy Speakers, the presidency of Parliament, the secretary of Parliament and the Deputy Secretary as officers and list committees together with commissions as the working bodies of parliament.³⁵ Some of the powers of the Speaker of Parliament are representing the parliament, convening and presiding over its sessions, proposing the agenda for the sessions, signing laws and regulations enacted by the parliament, replacing the president of the republic in circumstances described by the constitution,

27 Senate Regulation, Chapter I, Section 3 Article 38(1); The Regulation of the Chamber of Deputies, Chapter I, Section 4 Article 34.

28 Senate Regulation, Chapter I, Section 4 Article 45; The Regulation of the Chamber of Deputies, Chapter I, Section 5 Article 40.

29 Senate Regulation, Chapter I, Section 4 Articles 45, 68 (2); The Regulation of the Chamber of Deputies, Chapter I, Section 5 Articles 41 and 60.

30 Law on the National Assembly of the Republic of Serbia, Articles 19, 24, 26 and 27.

31 Law on the National Assembly of the Republic of Serbia, Article 19; Rules of Procedure Serbia, Article 27.

32 Law on the National Assembly of the Republic of Serbia, Article 24.

33 Law on the National Assembly of the Republic of Serbia, Article 26.

34 Law on the National Assembly of the Republic of Serbia, Article 27; Rules of Procedure Serbia, Article 44.

35 The Standing Orders of the Croatian Parliament, Articles 32, 35 and 39.

officially accepting sponsorships and performing other tasks determined by the constitution, laws and standing orders.³⁶ The presidency of parliament is made up of the Speaker and the Deputy Speakers, and is responsible for accepting sponsorships on behalf of the parliament and establishing its annual schedule of sessions, amongst other things.³⁷ The working bodies debate motions and initiatives for the enactment of laws and other acts as well as other matters within the competence of the parliament, and they monitor the work of the government.³⁸ The list of committees and their tasks are specified in the Standing Orders.

The main officers and organs of the National Assembly of Slovenia, as stated by the Rules of Procedure, are the President of the National Assembly, the vice presidents, the Council of the President of the National Assembly, the Secretary General of the National Assembly, the Legislative and Legal Service of the National Assembly and the working bodies – committees and commissions.³⁹ Some of the main tasks of the President of the National Assembly are representing the National Assembly, convening and presiding over sessions of the National Assembly, signing laws and other adopted acts, referring issues for discussion to the working bodies and other tasks specified by the constitution, laws and Rules of Procedure.⁴⁰ The vice presidents assist and substitute the president.⁴¹ The Council of the President consists of the president, the vice president, the leaders of deputy groups and the deputies of national communities.⁴² It is primarily tasked with deciding on adopting draft laws by urgent procedure, discussing them with a shortened procedure or holding preliminary discussions on a law, the duration of sessions and other issues specified by the house rules.⁴³ The Secretary General heads the services of the National Assembly and the legislative and legal service and delivers opinions on the conformity of draft laws, others acts and amendments with the constitution and the legal system.⁴⁴ Working bodies are established in the National Assembly to monitor the state of affairs in individual areas, to prepare policy decisions in such areas, to formulate positions on particular issues and to discuss draft laws and other acts of the National Assembly.⁴⁵ The tasks handled by committees in the parliaments of other countries presented in this chapter are taken care of by commissions, either standing or ad hoc – e.g. the Constitutional Commission, which is necessary in the process of amending the constitution.⁴⁶

36 The Standing Orders of the Croatian Parliament, Article 33; The Constitution of the Republic of Croatia, Articles 78 and 97.

37 The Standing Orders of the Croatian Parliament, Article 37.

38 The Standing Orders of the Croatian Parliament, Article 44.

39 Rules of Procedure Slovenia, Articles 19, 20, 21, 25, 27 and 32.

40 Rules of Procedure Slovenia, Article 19(1).

41 Rules of Procedure Slovenia, Article 20(1)–(2).

42 Rules of Procedure Slovenia, Article 21(2).

43 Rules of Procedure Slovenia, Article 21(6).

44 Rules of Procedure Slovenia, Articles 25(1) and 27(1).

45 Rules of Procedure Slovenia, Article 32(1).

46 Rules of Procedure Slovenia, Articles 35 and 174–175.

The officers of the National Assembly of Hungary are the Speaker, the Deputy Speakers, the Principal of the National Assembly and the parliamentary notary.⁴⁷ The main functions of the Speaker according to this act are to ensure the rights of the National Assembly; to provide, safeguard, maintain order in and organise the work of the National Assembly; to represent the National Assembly; to open, conduct impartially and close the sittings; to oversee compliance with the Rules of Procedure (this act); to chair the sittings of the House Committee; to conduct the operation of parliamentary committees; and to perform other tasks specified by the Fundamental Law, this act or another act or resolution of the National Assembly.⁴⁸ The Deputy Speakers substitute the Speaker in the order specified by the Speaker, and the Principal of the National Assembly exercises the functions of the Speaker, which are delegated to them by the Speaker.⁴⁹ Parliamentary notaries fulfil administrative duties.⁵⁰ The Hungarian Parliament includes two main types of committees: the House Committee, which acts as a general advisory organ for the National Assembly, and the Committees of the National Assembly, which can also be divided into standing, ad-hoc or inquiry committees.⁵¹ Standing committees mainly propose initiatives, make proposals, deliver opinions, make decisions in specified cases, contribute to and supervise the work of the government and exercise further powers specified in the Fundamental Law, acts, and provisions of the Rules of Procedure in the form of resolutions.⁵²

4. The parliamentary groups

This chapter focuses on parliamentary groups and their creation and powers as well as their internal rules and regulations.

Both in the Sejm and in the Senate of the Polish parliament, two types of parliamentary groups exist. The larger groups of members of parliament (hereinafter MPs) in both chambers are called ‘clubs’, with a minimum of seven senators (Senate) and 15 deputies (Sejm). The second, smaller ones are called ‘groups’ and need three senators or three deputies, respectively.⁵³ The authorities and goals of both types in both chambers – beyond political cooperation – are determined by the groups themselves, with each having to present their internal regulations to the Praesidium of the Senate and to the Marshal of the Sejm, respectively.⁵⁴ In both chambers, one senator or one

47 Act XXXVI of 2012, Section 1 a)–d).

48 Act XXXVI of 2012, Section 2(1)–(2).

49 Act XXXVI of 2012, Section 3(1), Section 4(1).

50 Act XXXVI of 2012, Section 5(1).

51 Act XXXVI of 2012, Sections 11(1) and 14(1).

52 Act XXXVI of 2012, Section 15(1).

53 Rules and Regulations of the Senate, Article 21(2)–(3); The Standing Orders of the Sejm, Article 8(2)–(3).

54 Rules and Regulations of the Senate, Article 21(7); The Standing Orders of the Sejm, Article (8)(7).

deputy can only belong to either one group or one club.⁵⁵ In both chambers, a Council of Seniors ensures the cooperation of the clubs and the respective chambers, mainly by issuing opinions draft plans on the agenda of sittings.⁵⁶

In the Senate of the Czech Republic, a minimum of five senators can establish a senators' group, and if the number drops below five after the establishment, the group ceases to exist.⁵⁷ Senators can do this either within their own political party, or if they are independent senators or senators whose political party does not have sufficient numbers to establish a group, they may either establish a group together with other such senators or join established groups.⁵⁸ The powers and tasks of the groups are scattered throughout the Standing Rules of the Senate. In the Chamber of Deputies, the deputies may associate with political groups within their political parties – the Rules of Procedure specify a minimal number of three members.⁵⁹ In addition, new political groups can be formed by deputies from different political parties or independent deputies that have left their political parties. In both cases, the minimal number of members is 10.⁶⁰ In both the Senate and the Chamber of Deputies, new groups must notify their respective president of the chamber in writing about certain information about the groups.⁶¹ According to the regulations of both chambers, each MP may only be part of one group.⁶²

The primary ways of establishing political caucuses in the National Council of Slovakia are to either be in the same political party, movement or election coalition as the other members or through the splitting and merging or said caucuses.⁶³ Other ways of establishing caucuses are not specified; instead, the formation must be approved by the National Council.⁶⁴ At least eight members are needed for the formation, and each MP may only be the member of a singular caucus.⁶⁵ The purpose – beyond associating with other MPs – and powers of the caucuses are not specified. The other manifestation of political groups in the National Council is the Gremium of Members, which comprises members delegated by the caucuses and is tasked with considering issues of political and procedural nature concerning the activities of the National Council and its bodies.⁶⁶

55 Rules and Regulations of the Senate, Article 21(4); The Standing Orders of the Sejm, Article (8)(4).

56 Rules and Regulations of the Senate, Article 16(1); The Standing Orders of the Sejm, Article 14.

57 The Standing Rules of the Senate Section 20(1); Section 21(1)–(2).

58 The Standing Rules of the Senate Section 20(1)–(2).

59 Rules of Procedure of the Chamber of Deputies, § 77(1) and (5).

60 Rules of Procedure of the Chamber of Deputies, § 77(2).

61 Rules of Procedure of the Chamber of Deputies, § 77(7); The Standing Rules of the Senate, Section 21(3).

62 Rules of Procedure of the Chamber of Deputies, § 77(4); The Standing Rules of the Senate, Section 21(1).

63 Rules of Procedure of the National Council, Section 64(1)–(2).

64 Rules of Procedure of the National Council, Section 64(3).

65 Rules of Procedure of the National Council, Section 64(4)–(5).

66 Rules of Procedure of the National Council, Section 66(1)–(3).

The house rules of both chambers of the Romanian parliament start with describing the process of establishing the groups, with 10 deputies being the minimum in the Chamber of Deputies and seven being the minimum in the Senate.⁶⁷ In both the Chamber of Deputies and the Senate, only MPs elected with the same political party or political or electoral alliance or who were independent may form a group, and those representing national minorities may form into a singular group.⁶⁸ The rule of one MP per group is curiously only found explicitly in the rules of the Senate, with the rules of the Chamber of Deputies only mentioning the change of membership.⁶⁹ The powers of the leader of the parliamentary group – and thus the powers of the groups themselves – are clearly defined. Some of these powers are representing the group, presenting information about the group, proposing the method of voting and participating – without the right to vote – in the meeting of the Standing Bureau (in both chambers).⁷⁰

The Law on the National Assembly of Serbia only briefly mentions parliamentary groups and avoids details regulating to the Rules of Procedure.⁷¹ These Rules of Procedure split the legislation on parliamentary groups into two parts: the first addresses the formation of such groups, and the second elaborates on the duties of the head and deputy heads and the changes in group membership. Parliamentary groups are to be formed in the National Assembly by at least five MPs, no MPs may be in more than one parliamentary group, and parliamentary groups are deemed ‘formed’ as soon as a list of members signed by every member is submitted to the Speaker of the National Assembly.⁷² The head of the parliamentary group represents the group.⁷³ Beyond that of participating in the work of the National Assembly in the manner stipulated by law, the tasks and powers of parliamentary groups are not specified, and the rules are scattered throughout the Rules of Procedure.⁷⁴

The regulations about political groups in the Standing Orders of the Croatian Parliament list a variety of combinations of MPs needed to establish a group.⁷⁵ This ‘decision’, as the Standing Orders refer to the establishment as well as any changes in the work and membership of the group, must be submitted to the Speaker of the Parliament and the Secretary of Parliament.⁷⁶ MPs are limited to being members of only one political group, except for those elected as representatives of national

67 Senate Regulation, Chapter I, Section 2 Article 16 (2); The Regulation of the Chamber of Deputies, Chapter I, Section 2 Article 13(1).

68 Senate Regulation, Chapter I, Section 2 Article 16(2)–(3); The Regulation of the Chamber of Deputies, Chapter I, Section 2 Article 13(1).

69 Senate Regulation, Chapter I, Section 2 Article 16(1).

70 Senate Regulation, Chapter I, Section 2 Article 18(1); The Regulation of the Chamber of Deputies, Chapter I, Section 2 Article 15(3).

71 Law on the National Assembly of the Republic of Serbia, Articles (30)–(31).

72 Rules of Procedure Serbia, Article 22.

73 Rules of Procedure Serbia, Articles 39–40.

74 Rules of Procedure Serbia, Article 38.

75 The Standing Orders of the Croatian Parliament, Article 29.

76 The Standing Orders of the Croatian Parliament, Article 30.

minorities, who may join another political group in addition to being members of the political group of national minorities.⁷⁷ The powers and tasks of a political group are not specifically listed, but it is noted that the chairperson of a political group has the status of chairperson of a parliamentary working body and thus shares the same rights and obligations.⁷⁸ Political groups may employ officials as secretaries and for administrative tasks, the costs of whom are covered by parliament funds.⁷⁹

According to the Rules of Procedure of the National Assembly of Slovenia, deputy groups are to be formed at most seven days after the National Assembly elects its president.⁸⁰ Until these are formed, deputy groups consist of the deputies elected from the same list of candidates, deputies from voters' lists and deputies representing national communities.⁸¹ Other than forming a group, deputies also have the right to become or cease to become members of an already formed group, and groups can also merge into one group, although the familiar limit of one group per MP still stands.⁸² Under normal circumstances, at least three deputies are needed to form a group, but with two exceptions.⁸³ The first is that the deputies who were elected from voters' lists can form deputy groups irrespective of their number, and the other is that the two deputies of the Italian and Hungarian national committees together have a status equal to that of a deputy group.⁸⁴ It is interesting to observe that the house rules of the Slovenian parliament – uniquely out the observed countries in this regard – name the two most prominent national committees, as opposed to merely slotting them under representatives of national minorities. The tasks and powers of the groups are not specified.

Provisions about parliamentary groups are scarcely found in the act on the National Assembly of Hungary as it only regulates a few powers as well as details related to the expenses of the groups.⁸⁵ The rules on establishment, functioning, powers, rights and termination are found in the resolution on certain provisions of the Rules of Procedure. Members belonging to the same political party may only form a single parliamentary group, with a minimum of five MPs needed to set up a group, which decreases to three if the MPs belong to the same political party and have obtained their mandate from the same independent national party list.⁸⁶ The parliamentary group must elect a leader, and it can choose to elect deputy leaders and other officials.⁸⁷ Uniquely amongst the observed rules of parliaments, the termination process of a parliamentary group is regulated in detail, with the reason for

77 The Standing Orders of the Croatian Parliament, Article 29.

78 The Standing Orders of the Croatian Parliament, Article 29.

79 The Standing Orders of the Croatian Parliament, Article 31.

80 Rules of Procedure Slovenia, Article 16.

81 Rules of Procedure Slovenia, Article 11(1).

82 Rules of Procedure Slovenia, Articles 28 and 31(1).

83 Rules of Procedure Slovenia, Article 29(2).

84 Rules of Procedure Slovenia, Article 29(3)–(4).

85 Act XXXVI of 2012, Section 6(1).

86 Resolution 10/2014. (II. 24.) OGY, Section 1(1)–(2), Section 2(1)–(2).

87 Resolution 10/2014. (II. 24.) OGY, Section 3.

termination being the decrease of members to less than five/three, the termination by choice of the group or the termination of the political party that was the basis of the group.⁸⁸

The similarities in the regulations of parliamentary groups are prevalent, with only a few exceptions. All countries require a minimum number of MPs to form groups (and the numbers are fairly similar), with the only exception being those mentioned in the Slovenian parliament. All regulations limit MPs to be members of only one group, and almost none of countries specify the powers and tasks of the groups. It is clear that political groups as institutions are generally similarly regulated in all observed countries. One other point of interest in the regulations is the tendency of having limited options when it comes to switching groups or founding new one, such as a higher minimal member count in the case of the Chamber of Deputies of the Czech parliament or the formation of new caucuses (in addition to the ones created through the merging or splitting of existing ones) needing the explicit approval of the parliament. These are likely measures taken by parliaments to prevent ‘party switching’, i.e. the change of parliamentary groups of MPs – a phenomenon that was largely prevalent in post-communist countries.⁸⁹

5. The legal status of officeholders

In our final chapter, we examine how parliaments handle conflict of interest and immunity and the nature of MPs’ mandates. As a comprehensive listing of these would exceed the limits of this study, we limit the analysis to the most important rules found in the constitutions, relevant acts and house rules.

One of the most fundamental rules in any bicameral parliamentary system is that no person may be a member of both chambers. This happens in the Polish parliament, with the very first rule specifically on deputies and senators in the Polish constitution being that “no one may be a Deputy and a Senator at the same time”. The prohibited positions alongside having a mandate in the Senate of the Sejm are listed with specificity in the constitution. Immunity is also primarily regulated on the level of the constitution, which declares that “a Deputy shall not be held accountable for his activity performed within the scope of a Deputy’s mandate during the term thereof nor after its completion”; a Deputy cannot be held criminally accountable without the consent of the Sejm/Senate until their mandate expires. The mandates of Deputies and Senators are free, unrestricted mandates, with the constitution explicitly declaring that “they⁹⁰ shall not be bound by any instructions of the electorate”. These rules

88 Resolution 10/2014. (II. 24.) OGY, Section 5(1).

89 Semenova, 2015, pp. 272–291.

90 The regulations of Article 107, 1. are formulated with primarily the deputies of the Sejm in mind; however, Article 108 states that Articles 103–107 shall apply, as appropriate, to Senators as well. Thus, we do not specify in every instance that both chambers are affected. The Constitution of the Republic of Poland, Chapter IV, Article 108.

are expanded upon – as the constitution itself states – by statutes, e.g. the house rules regulating internal conflicts of interests, such as simultaneously being a member of a standing committee of a subject area over which one holds the position of minister or secretary.⁹¹

Conflict of interest, immunity and MPs' mandates are primarily regulated in the Constitution of the Czech Republic. The constitution states that no person may serve as a member of both chambers of parliament at the same time and adds a brief list of the most important incompatible positions, together with the consequences such incompatibilities result in, as well as opening the list up to be expanded in statutes. Act of Law No. 159/2006 Coll., on Conflict of Interests⁹² regulates the conflicts of interest of MPs in detail and expands on this list of prohibited activities and offices, such as a managerial position in a corporate entity or at a public administration office.⁹³ The constitution ensures the free mandates of MPs by declaring that "Deputies and Senators shall perform their duties personally in accordance with their oath of office; in addition, they shall not be bound by anyone's instructions". On the immunity of MPs, the constitution declares that there shall be no legal recourse for their votes in the parliament; further, they shall not be criminally prosecuted except with the consent of their chamber for the duration of their mandate, and they have the right to refuse to give evidence if they learned about it through their position as MPs. The house rules of both chambers expand on the immunity rules by regulating the Committees on Mandate and Immunity, which handle decisions on the criminal prosecution of MPs.⁹⁴

Similarly to the first two examples, the fundamental rules on conflict of interest, immunity and mandates are found in the constitution in the case of Slovakia as well. The constitution deals with mandates first, by stating that "they [Members of Parliament] shall exercise their mandates individually and according to their best conscience (...)" and declaring laconically that "no orders bind them [Members of Parliament]". When it comes to MPs' conflicts of interests, the constitution mentions the most important incompatible offices, such as those of judge, public prosecutor or members of the armed forces. Detailed rules on incompatibility are included in the Constitutional Act on the Protection of Public Interest in the Performance of Offices by Public Officials No. 357/2004⁹⁵, which lists the offices, jobs and activities where conflict of interest arises for public officials, e.g. members of parliament.⁹⁶ Matters of incompatibility of MPs are handled by the Committee on Incompatibility of

91 Rules and Regulations of the Senate, Article 20(4).

92 Act of Law No. 159/2006 Coll., on Conflict of Interests.

93 Act of Law No. 159/2006 Coll., on Conflict of Interests, Articles 5(1) and (3).

94 Rules of Procedure of the Chamber of Deputies § 45; The Standing Rules of the Senate, Section 13.

95 Constitutional Act on the Protection of Public Interest in the Performance of Offices by Public Officials No. 357/2004.

96 Constitutional Act on the Protection of Public Interest in the Performance of Offices by Public Officials No. 357/2004 Article 4(2) a, d); Article 5(2).

Functions of the National Council.⁹⁷ The provisions on an MP's immunity declare absolute protection – as in no prosecution even after the expiration of the MP's mandate – on votes and statements, and relative protection for any criminal action only to be prosecuted, sanctioned, otherwise disciplined or held in pre-trial detention with the approval of the National Council until the expiration of the mandate. The Mandate and Immunity Committee of the National Council decides on questions related to mandate and immunity, such as the proper acquisition of the mandate, ascertaining the eligibility or deciding over a permission for detaining an MP.⁹⁸

The Constitution of Romania is rather short-spoken concerning incompatibilities and a free mandate, but immunity is somewhat expanded upon. The mandate of the Deputies and Senators shall be in the service of the people and is to be used freely; being a Deputy or a Senator is mutually exclusive and incompatible with exercising any public office in authority except for government membership, and further incompatibilities are to be regulating in organic laws; immunity is absolute for votes cast and political opinions expressed and relative for criminal investigation and prosecution, as those are allowed, but searching, detaining or arresting an MP is only possible with the consent of the chamber to which they belong, although if caught in the act, they can be searched and detained without the need for approval. The internal rules detail the purpose, general rules and procedures affiliated with the mandate, immunity and conflict of interest, in the latter of which the list of incompatibilities is greatly expanded.⁹⁹ Both chambers have dedicated committees for examining the issues with both immunity and conflict of interest and fulfil their task by presenting an opinion, arguing for both sides, on the basis of which the given chamber can cast a vote.¹⁰⁰ Immunity is treated with rigorous regulation in Romania as the country has theorised about the institution more in depth than the surrounding countries, and the public reception to parliamentary immunity tends to be more negative.¹⁰¹

In the case of Serbia, the rules on this chapter's topic are also only briefly mentioned in the constitution, and detailed regulation is delegated to laws – most prominently the Law on the National Assembly – but also to the internal rules. Art. 102 and 103 of the Constitution of the Republic of Serbia only establish fundamental decrees on the most basic incompatible positions with other such conflicts of interests to be stipulated by law, and the rules of immunity against criminal or other proceedings. As with some of the previous examples, immunity is once again absolute when it comes to expressed opinions or votes cast in parliament. The Law on the National Assembly and the Rules of Procedure go into more detail when regulating these topics, but only in terms of procedural rules, and they do not add fundamental provisions, not even

97 Rules of Procedure of the National Council, Section 58.

98 Rules of Procedure of the National Council, Section 57.

99 Senate Regulation, Chapter IV, Sections 1–3; The Regulation of the Chamber of Deputies, Chapter V, Sections 1–3.

100 Senate Regulation, Chapter IV, Section 1 Article 189(7), Section 2 Article 199(1); The Regulation of the Chamber of Deputies, Chapter V, Section 1 Article 220(3), Section 2 Article 228(2).

101 Negoită, 2015, pp. 89–109.

an expansion on the list of incompatibilities. One notable exception to this would be, however, that the free nature of mandate of the deputies – as this attribute was only indicated in the constitution – is specified in the Law on the National Assembly, which declares that “a Member of Parliament shall decide, act and vote in accordance with his/her personal convictions”.¹⁰²

Unlike all previous examples, the Constitution of the Republic of Croatia only regulates two of the three topics, namely the mandate and immunity of deputies, but it makes no mention of the deputies’ conflicts of interests. The regulations in the constitution on mandate and immunity are – as we have grown to expect – short, only establishing the most basic of rules: mandates cannot be imperative, and the members of the Croatian parliament enjoy immunity, meaning that they cannot be held criminally liable for their expressed opinions and cast votes, and they can only be held liable for criminal offences with the approval of the Croatian parliament or if they are caught perpetrating a serious crime. The internal rules expand somewhat on these rules –albeit only with procedural decrees and only a singular mention of incompatibility, also of a procedural nature, under the rules about mandates.¹⁰³ The main source of regulations for incompatibilities of MPs is the Act on the Prevention of Conflict of Interest,¹⁰⁴ which lays down general rules about conflict of interest and prohibited conducts, especially with other public offices or administrative positions in business entities.

The rules on mandates, conflict of interest and immunity of MPs in the Constitution of Slovenia are also rather short, with only three articles specifically on the National Assembly and National Council. Art. 82 and 83 declare the fundamentals on mandates, incompatibilities and the immunity of deputies of the National Assembly. The deputies are not to be bound by any instructions, and the law shall establish incompatibilities. MPs have representative mandates by nature, and as such, their criminal liability is dependent on either the permission of the National Assembly or being caught in the act of a serious offence. They have complete immunity for expressed opinions and votes cast in the National Assembly and its working bodies. Art. 100 establishes the incompatibility and immunity rules of the National Council by stating that no one may be a member of the National Council and deputy of the National Assembly at the same time and that the immunity of members is identical to that of deputies. The Rules of Procedure of the National Assembly only expand upon the rules of immunity, regulating the procedure in detail and assigning the Commission for Public Office and Elections to handle such issues.¹⁰⁵ The comprehensive rules for conflict of interest are found in the Integrity and Prevention of Corruption Act.¹⁰⁶ Amongst many other fundamental incompatibility rules, the act establishes

102 Law on the National Assembly of the Republic of Serbia, Article 37.

103 The Standing Orders of the Croatian Parliament, Articles 12 and 23.

104 Act on the Prevention of Conflict of Interest (OG no. 143/21).

105 Rules of Procedure Slovenia, Articles 36 and 203–214.

106 Integrity and Prevention of Corruption Act, Official Journal of the Republic of Slovenia N. 45/10.

the Commission for the Prevention of Corruption, which is an autonomous and independent state body tasked with handling such matters. The act regulates office incompatibilities – e.g. a general ban on any professional or other activity aimed at generating income or proceeds for a professional official – with certain exceptions, such as pedagogical and scientific activities, and the Commission for the Prevention of Corruption may allow individual exception from these rules.¹⁰⁷ The act also prohibits professional officials to be a member or be a part of management/supervision/representation of a company, economic interest group, cooperative, public agency or any other entity governed by public or private law.¹⁰⁸

Art. 4 in the Fundamental Law of Hungary is the only article that deals with the three topics in some way, but even then, only the mandate of MPs is substantially addressed as the article declares their free mandate: “They [members of the National Assembly] shall perform their activities in the public interest, and they shall not be given instructions in that respect”. The second section of the article briefly deals with immunity and conflict of interest by stating that “[MP’s] shall be entitled to immunity and to remuneration ensuring their independence” and delegating the regulation of conflict of interest to a cardinal act. The act in question – at least in the case of MPs – is the act on the National Assembly, which dedicates an entire chapter to the status of its members. The immunity regulations differ somewhat from the previous examples, in that the immunity for the votes cast and opinions communicated is not absolute but has two exceptions where an MP can be held liable.¹⁰⁹ The main rules on conflict of interest are divided into incompatibility and economic conflict of interest. Incompatibility means that a “member’s mandate shall be incompatible with any other state, local government or economic office or position”; furthermore, the MP may not pursue any other gainful occupation except for scientific, artistic, or editorial activities.¹¹⁰ The rules of incompatibility also give an exhaustive list on what offices an MP can hold.¹¹¹ Under the regulations of economic conflict of interest, MPs are banned from being exclusive or majority owners or executives or senior employees of a financial entity, from being shareholding members or shareholders in a non-transparent business organisation, or from leading/being members of an organ established for awarding grants.¹¹² The procedural rules on conflict of interest and immunity are found in the resolution on certain provisions of the Rules of Procedure.¹¹³

The legal status of officeholders is, in almost all cases, only regulated on a surface level in the constitutions of the countries, and the more detailed rules about the topics are delegated to either the internal rules or – mostly for conflict of interest – a dedicated law.

107 Integrity and Prevention of Corruption Act, Article 26(1)–(2), (4).

108 Integrity and Prevention of Corruption Act, Article 27(1).

109 Act XXXVI of 2012, Section 73(1).

110 Act XXXVI of 2012, Section 80(1).

111 Act XXXVI of 2012, Section 80(2).

112 Act XXXVI of 2012, Section 84.

113 Resolution 10/2014. (II. 24.) OGY, Sections 146–147, Sections 149–152.

6. Conclusion

The goal of this study was to inform using primary, currently-in-effect sources. We wished to present institutions connected to the legislative powers through these sources and grant an overview over the parliaments of the observed countries. Through the obtained information, certain general conclusions could be drawn. The post-communist parliaments of the observed countries generally have the same authorities, functions and structural solutions, with the main differences being the level of legislation on which certain institutions or topics are regulated. Committees, for example, generally have the same types and main functions; parliaments are either unicameral or bicameral (or incompletely bicameral); officeholders generally fulfil the same functions and sometimes even have the same names; and constitutions tend to lay down only the most fundamental of provisions.

If we had to summarise this comparative study with a central observation, it would be that a substantial number of similarities exist between the legislative powers of the countries examined in all their aspects. The systems have no cardinal differences – notwithstanding the historical and cultural differences – that would significantly disrupt the semi-uniformity found between the observed legislative powers.

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