

**SUSPENSION, WITHDRAWAL AND EXCLUSION
OF A MEMBER STATE FROM THE INTERNATIONAL
CIVIL AVIATION ORGANIZATION IN REFERENCE TO
THE LEGAL REGULATIONS OF THE CONSTITUTION
OF THE REPUBLIC OF POLAND**

**ZAWIESZENIE, WYSTĄPIENIE I WYKLUCZENIE
PAŃSTWA CZŁONKOWSKIEGO Z ORGANIZACJI
MIĘDZYNARODOWEGO LOTNICTWA CYWILNEGO
W NAWIĄZANIU DO REGULACJI PRAWNYCH
KONSTYTUCJI RP**

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Abstract

The acquisition of membership of states in international organizations depends only on their individual and independent will. Article 90 of the Constitution of the Republic of Poland refers to such a possibility, but does not refer to the procedure for the withdrawal of a Member State from an international organisation, its exclusion or suspension of rights. However, the membership bond may be limited by an effective procedure for suspending membership rights. However, this is not the only form of sanctioning the behavior of states belonging to international organizations, including the International Civil Aviation Organization. At the initiative of ICAO, a Member State may be excluded from that organisation, and at the initiative of a Member State it may withdraw from that organisation. ICAO provides for each of the indicated procedures in its statutory provisions, presenting at the same time specific reasons for initiating proceedings in this regard.

Keywords: constitution, international organization, state, membership

Abstrakt

Nabycie członkostwa państw w organizacjach międzynarodowych uzależnione jest jedynie od ich indywidualnej i niezależnej woli. Konstytucja Rzeczypospolitej Polskiej w art. 90 wskazuje na taką możliwość, nie odnosi się jednak do procedury wystąpienia państwa członkowskiego z organizacji międzynarodowej, jego wykluczenia lub też zawieszenia uprawnień. Wiąż członkowska może jednak ulec ograniczeniu poprzez skuteczną procedurę zawieszenia uprawnień członkowskich. Nie jest to jednakże jedyna forma sankcjonowania zachowań państw należących do organizacji międzynarodowych, w tym także do Międzynarodowej Organizacji Lotnictwa Cywilnego. Z inicjatywy ICAO państwo członkowskie może zostać wykluczone z tej organizacji, z kolei z inicjatywy państwa członkowskiego może ono wystąpić z tej organizacji. ICAO przewiduje w swoich przepisach statutowych każdą ze wskazanych procedur, prezentując jednocześnie konkretne przyczyny wszczynania postępowań w tym przedmiocie.

Słowa kluczowe: konstytucja, organizacja międzynarodowa; państwo; członkostwo

Introduction

International organizations are (after states) the most important entities in international relations. They bring together entities whose functioning is based on convergent assumptions. It would be difficult to implement the state's own policy without the compatibility of the interests of the community to which it belongs. The mere acquisition of membership in an international organization is a long-term procedure under which the entity acquires certain rights, but also obligations. Sometimes they have a positive impact on the member state, which, for example, develops economically thanks to the financial support of the organization, while at other times it may affect it negatively, e.g. through the necessity to incur membership costs or financial sanctions related to the violation of statutory provisions.

Membership, which is a link between the state and the organization, is usually full, which involves the possibility of making decisions affecting the activities of the organization. It seems appropriate to say that international organizations through their members are able to exercise competence in all areas of international cooperation. Their role is constantly growing, as are their competences.

The Constitution of the Republic of Poland of 2 April 1997¹ does not define the concept of international organization, although it is used many times. According to Article 90(1) of the Constitution, “the Republic of Poland may, on the basis of an international agreement, transfer to an international organization or international body the competences of organs of state authority in certain matters.” The Fundamental Law also does not specify a specific catalogue of international organisations to which state powers may be transferred. Membership of Polish organizations is therefore a limitation of the exercise of power or a transfer of competences in order to exercise them jointly with other States [Menkes 2001, 15]. The Constitution also does not refer to the procedure for the withdrawal of a Member State from an international organization, its exclusion or suspension of membership rights.

Article 90(2) of the Constitution provides that “A bill granting consent to the ratification of an international agreement referred to in para. 1 shall be adopted by the Sejm by a majority of 2/3 of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by a majority of 2/3 of votes in the presence of at least half of the statutory number of senators.” [Działocha 1999, 3]. This regulation refers to the special procedure for ratifying an international agreement on the basis of which Poland transfers its competences to ICAO. The procedure and conditions for granting consent to ratification are deliberately distinguished taking into account the procedure for enacting ordinary laws, which is contained in Articles 118-123 of the Constitution. The basis for this state of affairs is the involvement of the Polish state in the international integration process through forms that have a decisive and final impact on the implementation of the principle of sovereignty indicated in Chapter I of the Constitution [Kędzia 2009, 184; Opaliński 2010, 89].

An important element of the indicated research topic is also Article 89 of the Constitution. According to para. 1, point 3 of this article: “Ratification by the Republic of Poland of an international agreement and its denunciation shall require prior consent expressed by statute, if the agreement concerns the Republic of Poland’s membership in an international organisation.” An international agreement on the matters contained in Article 89,

¹ Journal of Laws No. 78, item 483 as amended [hereinafter: Constitution].

para. 1 to 5, may be ratified by the President only if the Parliament approves this action by law. In the literature, this procedure is referred to as “major ratification.” Nominally, the catalogue of cases contained in Article 89 of the Constitution has a closed formula, but the way its content is presented opens it up to interpretation and may raise disputes. In case of doubt, a presumption should be adopted in favour of the obligation to obtain consent to ratification in the form of a relevant law. This is determined primarily by the legal force of a ratified international agreement in the system of sources of law, the rank of the issues that are the subject of its regulation, and its potential impact on individual freedoms and rights. If, on the basis of an international agreement, the competence of organs of state authority in certain matters is to be transferred to an international organisation or international body (Article 91(1)), consent to ratification of such an agreement is given in a special qualified procedure, including the possibility of holding a national referendum [Tuleja 2019, 69].

Termination of membership of states in international organizations takes place through the procedure of withdrawal or exclusion. Member States may withdraw from an international organization by following the withdrawal procedure. They may also be excluded from it for not respecting the fundamental principles of the international organization to which they belong. The sanction with milder consequences for the state is the suspension of membership, which does not break the bond of membership.

The aim of this study is to present the cessation and limitation of membership of states in the International Civil Aviation Organization, taking into account the Constitution, as well as the practice of countries to which legal regulations in this subject have been applied. In this study, analytical-legal and legal-comparative methods were used, which enabled an appropriate interpretation of the statutory provisions and drawing conclusions about their application.

1. Establishment of the International Civil Aviation Organization in relation to membership

The period of the 20th century is the time when aviation was formed as a new field of human activity in the air dimension. The use of aircraft was seen on a national scale. The change in such thinking took place

after the first international flight from France to Great Britain was made in 1909. This fact revealed a completely new dimension of the use of aviation in the international system, which required the establishment of international legal regulations for air navigation. The point was not only to regulate technical standards, signs and signals of aircraft, but also to determine the owner of the airspace above the territory of a given state. Until the outbreak of the First World War, these problems were not regulated by the adoption of international legal regulations in this area. After the defeat of Germany and its allies, in November 1918, a six-month period of armistice began. At that time, the Peace Commission in Paris began to work intensively, the purpose of which was to prepare peace treaties with the Central Powers. In February 1919, the Aeronautical Commission of the Paris Peace Conference was established. The conference resulted in the drafting of the first world aviation convention called the Convention Governing Air Navigation.² Pursuant to the provisions of the Convention, a permanent international commission was established under the name of the International Air Navigation Commission. World War II was a period of extraordinary development of military aviation, which played a significant role on the fronts of this war, being the most effective means of combat next to tanks. Particularly dynamic development of air carriers took place in the United States, Canada and Mexico. The main countries that participated in the discussions on post-war solutions in the field of air transport were the United States on the one hand, and Great Britain and Canada, which supported it, on the other. A particularly strong impulse to accelerate work on determining solutions in the field of post-war order and the use of civil aviation was the successful invasion of the allied forces in Normandy in 1944, which brought the end of the war closer. In connection with these predictions, the U.S. Department of State invited states involved in the war with Germany and Japan, as well as neutral states, to Chicago for the International Civil Aviation Conference, the program of which provided that its purpose would be to determine post-war solutions in the field of airline networks in the world, division air routes between countries and the development and adoption of a new

² Convention Governing Air Navigation of 13 October 1919, Journal of Laws No. 6, item 54 as amended.

air convention covering all countries of the world and replacing the Paris Convention of 1919. It was also planned to establish and equip an international organization with appropriate competences, which was to exercise control over the entire world air transport. The conference was held in Chicago in November 1944 and was attended by representatives of 52 countries, including a representative of Poland. Eventually, the Chicago Conference adopted the Final Act, drawn up on December 7, 1944, containing, among other things, the Convention on International Civil Aviation.³ Pursuant to the provisions of the Chicago Convention,⁴ delegations of 26 countries established the Provisional International Civil Aviation Organization on June 6, 1945. It functioned as an institution until the entry into force of the Convention, which took place on April 4, 1947. On that day, at the request of 26 states, it was transformed into ICAO. In October of the same year, under agreements approved by the UN General Assembly, it was granted the status of an autonomous international specialized organization of the United Nations [Zajas 2015, 48-49].

There are three categories of membership in ICAO. These are original members, states acceding to the Convention and states admitted to ICAO. Original members are all states parties to the Chicago Convention. Any UN member state may accede to the Convention by accepting the statute and notifying the United States government as the depositary of this agreement, except that states that were allies of Germany during World War II must obtain the consent of any state attacked during the war, and consent of the UN General Assembly and the ICAO Assembly. The ICAO Assembly decides on the membership of a non-UN member state with the prior approval of the UN General Assembly by a four-fifths majority [Latoszek and Proczek 2006, 118-19].

³ Convention on International Civil Aviation of 7 December 1944, in: *SA collection of statutes and regulations of international organizations. United Nations specialized agencies*, edited by S. Hubert, Vol. II, Warsaw 1967, p. 715-59 (Journal of Laws of 1959, No. 35, item 212 as amended) [hereinafter: ICAO Convention].

⁴ Convention on International Civil Aviation of 7 December 1944, Journal of Laws No. 35, item 212 as amended [hereinafter: Chicago Convention].

2. Suspension of a Member State from ICAO

Suspension of a state's membership in ICAO is related, as a rule, to the suspension of a given state from exercising the rights and privileges vested in members of the United Nations. According to Article 93' C of the ICAO Convention, "Members of the Organization suspended from the exercise of the rights and privileges of members of the United Nations shall, at the request of the United Nations, be suspended from the rights and privileges of members of this Organization." This regulation makes the manner of exercising ICAO membership dependent on UN membership. It should be noted, however, that the mere suspension of UN privileges does not automatically reduce ICAO privileges. It is still an important step to submit a request from the UN that the authorized bodies of ICAO also decide to suspend membership in its structures.

The ICAO Convention also provides for two possibilities where a special procedure for suspending voting rights in the Assembly and in the Council applies. The first regulated in Article 88 of the ICAO Convention provides that "The Assembly shall suspend the right to vote in the Assembly and in the Council of any Contracting State which has been found not to comply with the provisions of this Chapter." Thus, infringements of an institutional and organizational nature may constitute grounds for initiating suspension proceedings.

In turn, the second option to suspend membership is regulated in the chapter on the finances of the Organization. According to Article 62 of the ICAO Convention, "The Assembly may suspend the right to vote in the Assembly and in the Council of any Contracting State which has failed to meet its financial obligations to the Organization in due time." That legislation therefore refers directly to a financial obligation which is incumbent on each Member State. Suspension of powers is therefore a sanction in this case resulting in a restriction of membership rights.

It is also worth noting that in the case of suspension of a member state under ICAO, they are clarified and specified in the resolutions of the Assembly. The latest of them, adopted at the 39th session of the Assembly in 2016,⁵ provides for the possibility of suspending the right to vote

⁵ ICAO Assembly Resolution of 6 October 2016, A 39-31 ("Fulfillment by Member States

in the Assembly (for states that are in arrears with their financial obligations for a period of 3 years) and in the Council (for states that are in arrears with their financial obligations for a period of 18 months). This resolution also shapes additional measures that can be applied to countries with arrears in contributions. These are the loss of the ability to organize conferences or the limitation of access to documentation [Kraśnicka 2019, 53].

The breach of financial obligations, which is a reason for suspension of membership, also applies to the functioning of ICAO. Each Member State is obliged to pay membership fees, and any omissions in this respect may lead to limitation of membership rights.⁶

Failure to meet financial obligations to ICAO was the reason for the suspension of the Republic of South Africa and Poland, which made it the so-called “inactive member” [ibid.].

In addition, in 2019, this organization indicated 11 ICAO member states whose right to vote under Article 62 of the Chicago Convention has been suspended. These include: Liberia, Antigua and Barbuda, Haiti, Libya, Malawi, Micronesia, Nauru, Palau, São Tomé and Príncipe, South Sudan and the Syrian Arab Republic.⁷

3. Withdrawal of a Member State from ICAO

The International Civil Aviation Organization in its statutory provisions provides for the possibility of withdrawal of a Member State. According to Article 95 of the ICAO Convention, “Any Contracting State may denounce this Convention three years after its entry into force by notification to the Government of the United States of America, which shall promptly notify each Contracting State thereof. The denunciation shall take effect one year after the date of receipt of the notification and shall have effect

of financial obligations towards the Organization and actions to be taken in the event of non-performance”), https://www.icao.int/Meetings/a39/Documents/Resolutions/a39_res_prov_en.pdf [accessed: 01.02.2022].

⁶ Ibid.

⁷ Financial Aspects of the Question of Contributions in Arrears, ICAO Working Paper A40-WP/46 (24.09.2019), Appendix C, https://www.icao.int/Meetings/a40/Documents/WP/wp_046_rev1_add1_en.pdf [accessed: 02.02.2022].

only in relation to the State which has made the denunciation. The occurrence of these regulations at the level of these regulations is therefore treated as termination of the founding act of the organization” [Hubert 1967, 723]. The necessary step in this case is to submit a notice of withdrawal to the US Government. Importantly, such a notification can only be made three years after the entry into force of the ICAO Convention. Therefore, these regulations do not raise any doubts as to the actions to be taken by a state wishing to leave the ICAO structure.

Cessation of membership through this procedure in the case of ICAO occurred quite sporadically, but it is worth noting that in 1950 the Chinese government decided to terminate the Chicago Convention and announced its official decision to withdraw from ICAO. At that time, there were problems related to the recognition of this particular decision by some members of the organization. Eventually, in 1953, People’s Republic of China re-ratified the Convention and returned to ICAO membership [Kraśnicka 2019, 53].

The provisions concerning the functioning of the International Civil Aviation Organization and the conditions of withdrawal from this organization are clearly and unambiguously defined, although they are not described in detail. The first condition for the effective breaking of the bond of membership is notification of this intention to the US Government. The form of this notification has not been regulated by law, but it is usually in writing. The second condition is the observance of the relevant term of validity of the ICAO Convention. A Member State may denounce it only three years after its entry into force.

If the above conditions are met jointly, the Member State acquires the status of a third country one year after the notification date. This effect applies only to the state/states that have submitted the notification of the intention to withdraw.

4. Exclusion of a Member State from ICAO

In the case of ICAO, pursuant to Article 93’ a, point 2 of the ICAO Convention, “any State that has been expelled from the United Nations automatically ceases to be a member of the International Civil Aviation Organization, unless the General Assembly of the United Nations attaches

a contrary recommendation to the act of exclusion” [Hubert 1967, 722]. Thus, similarly to the regulations contained in the UNESCO statute, membership of the ICAO is conditional upon membership of the United Nations.

In practice, the need to exclude a Member State from ICAO arose after World War II (before Article 93’ was introduced) in relation to Spain due to the undemocratic rule of Francisco Franco in that country. Ratifications required for entry into force of the amendment introducing Article 93’ ended only on March 21, 1961, and in 1950 the United Nations withdrew its recommendation to exclude Spain from the specialized organizations. At the 1951 session of the General Assembly, relations with the Spanish government were restored. It is pointed out that formally Spain has never been deprived of ICAO membership and in the official register of signatories it is referred to as a state that negotiated the original text of the Chicago Convention and ratified it as an original member as early as 1947 [Kraśnicka 2019, 51-52].⁸

Summary

The regulation of the possibility of withdrawal of a Member State from an international organisation, its suspension, as well as its exclusion does not constitute obligatory regulations of the founding act, nor is it included in the Constitution. The Fundamental Law refers only to the possibility of applying for membership in an international organisation, but does not indicate the catalogue of these organisations or the procedure itself. However, it establishes such a possibility. The decision to terminate membership is taken by international organizations independently and individually. In the case of legal norms shaping the International Civil Aviation Organization, the possibility of suspending a Member State, its exclusion and withdrawal has been drafted, but these are not extensive regulations. In the event of suspension of membership rights, the ICAO’s founding provisions provide for three possibilities in this regard. The first makes suspension in ICAO dependent on suspension in the UN, the second is related to failure to fulfill statutory obligations, and the third to non-fulfillment

⁸ See also Sochor 1991, 42.

of strictly financial obligations. What is important, each of these possibilities is used in practice, where e.g. the Republic of South Africa, Haiti and Libya were suspended.

The Chicago Convention also allows Member States to terminate it. The procedure does not constitute complicated stages that would be difficult to implement. The most important step in this case is the notification of the desire to become a member after at least three years of membership, which results in one year from the notification. The practice of implementing the withdrawal procedure is not extensive, but it is worth pointing to the example of People's Republic of China, which effectively left the ICAO in 1950, only to join it again in 1953.

Exclusion of a Member State from ICAO has been regulated quite briefly. The statute makes the removal of a member conditional on its prior exclusion from the UN. Thus, ICAO leaves the final decision to the United Nations on the exclusion of its members, and then makes a similar decision within its internal structures.

Membership in ICAO is therefore an independent and individual decision of each state. It has the right to withdraw from its structures and in this respect is obliged to implement the statutory provisions. A Member State may also be suspended in its powers as well as excluded. Both of these cases are related to violations of statutory obligations.

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