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THE EVOLUTION OF A POLITICAL POSITION OF A PRESIDENT IN POLAND

The currently prevailing globalization causes the growth of the importance of the institution. They are a guarantee of maintaining the functionality of all systems. The issue of cooperation between institutions and communication between them is important. The political system of the state is a particularly important system. It regulates the relations between individual institutions. In Poland, several different models of cooperation between individual state institutions can be observed. The relations between the president and the government are interesting. The functioning of the political system depends on how the institutions work. Only well-functioning institutions guarantee good functioning of the state.

Key words: institutionalism, neoinstitutionalism, political system, president, political norms and principles

INTRODUCTION

The aim of this article is an attempt to present the role that a president plays in a country of a parliamentary-cabinet political system. On the example of Poland, a difference between the role of a President which results from the legal regulations and its expansion as a result of personal political activity of a person performing this function is perceived. It is a phenomenon characteristic of so-called young democracies, that is countries in which the idea and practice of the functioning of mutual relations between particular state institutions do not work synchronically.

1. METHODOLOGY

1.1. INSTITUTIONALISM AND NEOINSTITUTIONALISM

The methodological orientation which was assumed in order to tackle the issue is institutionalism. It is assumed that political, social and economic order is a consequence of the existence and functioning of the institution to a great extent. It is a basic category owing to which the explanation of the political reality is done. In the notion of classical institutionalism, the organization of a state is an example of a characteristic institution. Such an approach results from the philosophical considerations of Plato and Aristoteles, who associated the state with the category of an institution. It was a central point of reference to consider the essence of the existence and functioning of political relations. In this sense, the institution of a state has a creative and controlling function over the sphere of politics. It happens due to the state's monopoly to constitute law which is observed in the whole area of the state and in all spheres of activity, that is in administrative, economic and social life. Such institutionalism started to develop dynamically in the second half of the 19th century. Outstanding representatives such as Max Weber, Francis Lieber or Thorstein Veblen recognize it as a mainly European theoretical standpoint. Moreover, important people in American political sciences such as Woodrow Wilson or Abbott Lowell also referred to this methodological orientation. Generally, institutionalism can be found at the source of political sciences in the second part of the 19th century as a recognition and explanation of the state from the point of view of the functioning of its institutions. Classical institutionalism remains connected with law, political and economic sciences. It is a methodological orientation which is characterized by its transparency and regularity. Based on the institution of the state, legality of authorities, principles of the organization of the state and the relations between the state and a citizen are explained clearly and intelligibly. Within the framework of the existing institutions, there is the entirety of political relations which occur between particular subjects of politics. To sum up, the recognition of political reality in institutionalism trend relies on the explanation how certain institutions have an impact on one another within the legal framework.

It assumes the analysis of the norms and principles which in fact regulate the political system and checks whether it is functional.

This article is especially interested in the formal position of the institution of the president within the executive power in the state of a parliamentary-cabinet political system.

In the contemporary political science there is a visible tendency to expand the field of research for an institutional interpretation of political reality. There is also a change in the perception of the institution which is no longer understood as a way of thinking based on traditionally shaped social mentality, customs and various behaviors. A key role is not only assigned to the sanctioning of the political system by legal and social norms respected in a given society.

It is assumed that the process of institutional changes is the main aspect of the following evolutions of the political system. One of the observations is a conclusion that a social and political development occurs as a result of institutional evolutions of the forms of the society which means the necessity of the changes in mentality and legislation adjusting the state to the challenges of the modern world¹.

In the contemporary political science there is a tendency to perceive more broadly the state institutions and interdependencies occurring between them. At present institutionalism is becoming an inclusive methodological orientation taking interdisciplinary assumptions. New research perspective concerning state institutions has been called neoinstitutionalism.

Neoinstitutionalism has appeared as a result of searching for a broader view of the state organization. It has been noticed that a political life does not only happen in a formal framework of legal provisions and that state institutions are not only space within which political decisions and activities are realized. Neoinstitutionalists opt for such an approach which will focus on political customs and traditions as well as direct relations between particular political actors.

In that sense, an essential significance is assigned to political culture characteristic for a given state of its political system. Including the background on which the formal relations and interdependencies between institutions occur to the analysis enables the formulation of more precise conclusions concerning the practice of the functioning of the political system.

Neoinstitutionalism postulates observation of political reality but with some distance which enables to notice a political reality from the perspective revealing a real condition and quality of political practice. The vocation of political science in this theoretical sense is still the analysis of the institutional order but the subject of the reflection is not only the state as an organization but its whole political system.

Within the framework of neoinstitutional approach, there are three types, that is: rational choice, historical and sociological. The specifics of neoinstitutionalism of rational choice are based on the assumption concerning the purposeful, rational functioning of the institution aiming to maximize the benefits of the activity but at the same time minimizing the costs. Historical neoinstitutionalism emphasizes the influence of the political norms, patterns and values which affect the institutions over time. Sociological neoinstitutionalism focuses on standard-setting function of the relation between particular institutions².

The subject of this article, that is the attempt to present the role of the president in a country with a parliamentary-cabinet political system, was presented in the trend of classical institutionalism as an institutional and legal analysis aiming to determine the regulations of mutual relations between the state institutions. It is assumed that the highest form of codification of system norms is the constitution. This issue is presented from a historical point of view indicating the evolution of the position of the president in the system of the executive power in the state with a parliamentary-cabinet political system.

1.2.POLITICAL SYSTEM

Generally speaking, a system is every internally coordinated and showing a particular structure collection of elements. The structure may be defined as a total of relations between the elements conditioned by the belonging of the given elements to this system. A political system is a state apparatus, political parties and organizations as well as formal and informal social groups participating in political activities within a given state and a total of political principles and norm regulating their mutual relations. A political system is understood as an ordered way to organize the political institutions functioning within the legal framework of a state. According to the institutional approach, a political system is the entirety of the functioning political institutions and relations between them as well as the principles of the functioning and normative relations on the base of which they function. The functions of a political system are the activities which aim to maintain and develop the existing system. They rely on the managing the political system according to commonly observed rules, solving the occurred conflicts concerning the contradictions

¹ Nowak, M. (2004). Instytucjonalizm w socjologii i ekonomii. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 189-204.

² Modrzejewski, A. (2011). *Metodologiczne i filozoficzne podstawy politologii*. Gdańsk-Elbląg, 102-104.

of group interests, improving the functioning of the institutions and implementing new rules and principles of functioning in the system and beyond it.

There are two characteristic types of a political system in democratic countries, namely a parliamentary-cabinet system and a presidential system. They regulate the dependencies and mutual competencies within the framework of state institutions belonging to the sphere of the executive power. In a parliamentary-cabinet system, the parliament has the creative and controlling function towards the government (cabinet). The government has a significant part of the competencies of the executive power; however, the role of the head of the state (the president) is limited. In a presidential system it is the head of the state who realizes the scope of executive power being the head of the government or like in a semi-presidential system the head of the state indicates the prime minister and affects the activity of the government.

Poland is a European democratic country of a parliamentary-cabinet political system. Its main specificity is expressed in the relations between particular institutions and the state authorities. The cabinet, that is the government, has the main prerogatives of the executive power. It performs tasks and obligations as a collective state authority – council of ministers and works under the management of the president of the council of ministers customary known as the prime minister. In addition, each of the ministers as well as the prime minister are also individual state authorities managing particular ministries and issuing legal acts of lower rank – regulations. The relation between the cabinet and the parliament in this political system indicates the primacy of the parliament. It occurs due to special privileges of the parliament towards the council of ministers. It is the parliament which performs the creative function due to the fact that the parliament forms the government and the controlling function (gives a vote of confidence or motion of no confidence to the prime ministers or particular ministers). Even though the office of the president belongs to the central state (executive) authorities, his or her role is limited. However, there is a certain area of competences, which despite the fact that they do not result directly from the legal regulations, enable the president to expand his or her prerogatives. It depends on the personality and determination of the person as well as the way of interpreting the legal regulations, including the constitution¹.

2. PRESIDENT IN POLAND HISTORICAL REVIEW

The tradition of the office of the president dates back in Poland to the provisions of the constitution from 17 March 1921. Since then until 2015 when the last presidential election took place, the system position and the competences of the president have evolved in particular periods. Generally speaking, we can distinguish: years between the first and the second world war, the period of socialism and the years after the democratic changes in 1989.

2.1. PRESIDENTIAL FIRST PERIOD 1922-1939

The first abovementioned period encompasses the period between 1922 and 1939. Originally, the president was elected by the joint upper chamber of the parliament (senate) and lower chamber (sejm) which formed so-called national assembly. The president, through the ministers responsible in front of the sejm and subjected officials, exercised the executive power. Every official document of the President to be valid required the signature of the president of the council of ministers and a proper minister, who, by signing the document, took responsibility for it. The nominations of the officials from the civil office of the head of the country were countersigned by the prime minister and he was also responsible for their activities in front of the sejm. According to the article 46 of the Constitution, the President was the supreme commander of the armed forces. However, he could not be the supreme commander during the war. The Constitution limited the function of the President to an honorary commander of the armed forces and therefore the role of the president was also limited. Moreover, the weakness of the office of the president was a lack of a legislative veto of the President, a limited right to dissolve the sejm and senate. The president did not have the right to issue decrees and only in order to implement law and with a statutory authorization he could issue executive regulations, orders and bans. The duties of the head of the country also included signing the laws and ordering their announcement in the Journal of Laws. In the sphere of international relations, the President represented the state externally, received the diplomatic representatives of the foreign countries and sent Polish diplomatic representatives. He concluded the international agreements; however, all the most important agreements required the consent of the parliament. Furthermore, the President also needed the consent of the sejm to declare war or make peace. One of the rights of the president was to grant clemency. On 2 August 1926, the March Constitution was amended by

¹ Żebrowski, W. (2015). *Teoria współczesnych systemów politycznych*. Olsztyn, 48-56.

the August Novelization. The Novelization brought about the following changes: the president was entitled to dissolve the sejm and the senate at the same time depriving the parliament of the possibility to dissolve on the basis of their own resolution. The president also received the right to issue legislative decrees. This novelization clearly strengthened the position of the executive power (the president and the government) moving away from the system of the parliamentary government.

The rules of electing the president did not change and they were applied in the elections by the National Assembly on 8 May 1933. However, two years later a significant change occurred. The April Constitution from 23rd April 1935 put the office of the president at the forefront of the supreme state authorities. One of the characteristic system changes was to replace the division of power with the rule of unitary and indivisible power of the president. In the Constitution, the provision concerning the president were included in the articles 2 and 3. Their content allowed to define the position of the president in the country. Article 2 item 1 said: 'There is the President at the forefront of the state'. The provision defined the place of the president in the country. The relation of the head of the country towards the state's authorities was defined in the article 1. The state which has the President at its forefront was presented as common good of all the citizens, a legal order and a moral value, the most supreme and the one to which the attributes of sovereignty were moved from the nation. Placing the president at the forefront of a state defined in such a way is much more than just placing him as the head of the state authorities.

Article 2 and 3 of the Constitution imposed particular obligations on the President, namely the care about the good of the state, defense readiness and position among the world nations. The president was morally responsible for the fates of the state in front of God and history. The state authorities: government, sejm, senate, armed forces, court, state control were all subjected to the leadership of the President. A characteristic feature of the office of the President in the March Constitution is the institution of prerogatives. The sphere of the activity of the head of the country did not require the countersigning. The prerogatives of the President included: indicating one of the candidates for the President and ordering general elections, appointing the deputy of the President for the duration of the war, appointing and dismissing the president of the council of the ministers, the first president of the Supreme Court and the president of the Supreme Chamber of Control, appointing and dismissing the Supreme Commander and the Inspector-General of the Armed Forces, appointing the Judges of the State Tribunal, senators holding their seats due to the selection of the President, appointing and dismissing the Head and the officials of the Civil Chancellery, dissolving Sejm and Senate before the end of the term of office, handing the members of the Government to the Court of the State Tribunal and granting clemency¹.

The Constitution from 1935 assumed a totally new system of appointing the head of the country. The President had the right to present his candidate for the office of the President. The Constitution did not include any provisions limiting the circle of candidates for the president. Theoretically, any person of legal age, at least 21, having full civil rights could become the head of the country. Furthermore, it did not define special qualifications of the candidate running for the president. Therefore, formal requirements for the candidates were very liberal. The elections of the head of the country as the normal procedure were included in the competences of the Electors' Assembly (which in a way replaced the National Assembly in the March Constitution). The Assembly consisted of the Marshal of the Senate as a chairperson, the Marshal of the Sejm as the deputy, the President of the Council of Ministers, the First President of the Supreme Court, the Inspector-General of the Armed Forces and 75 electors elected from the most worthy citizens in 2/3 by the Sejm and 1/3 by the Senate. The Assembly was appointed by the President at least 15 days before the end of his term of office. It was chaired by the Marshal of the Senate or by the Marshal of the Sejm in substitution.

As seen above, in the period between the two world wars, the rights of the presidents were changing. Ultimately, the position of the president as the head of the country was strengthened by the strong position among the executive authorities. The evolution of the position of the president from the parliamentary-cabinet system to the presidential or semi-presidential system became noticeable².

2.2. PRESIDENT IN EXILE 1939-1990

After the invasion of Germany in Poland in 1939, all the state institutions were interned abroad. The provisions of the April Constitution enabling the president to indicate the successor opened another chapter

¹ Ajnenkiel, A. (2001). *Konstytucje Polski 1791-1997*. Warszawa, 8-46.

² Górecki, D. (1995) *Pozycja ustrojowo-prawna Prezydenta Rzeczypospolitej i urzędu w ustawie konstytucyjnej z 23 kwietnia 1935 roku*. Łódź, 45-57.

in the functioning of the institution of the president of the country in exile. During the second world war and in the period between 1945 and 1989, when there was a non-democratic political system in Poland, the election of the president of Poland in exile happened according to a simplified constitutional procedure. The outgoing president indicated his successor, a candidate consulted with the main political powers. The period of the institution of the president of Poland in exile came to an end on 22 December 1990 when at the Royal Castle in Warsaw, the last president of Poland in exile handed the insignia of his office to the first president of free Poland elected in the general elections¹.

2.3. PRESIDENT DURING SOCIALISM 1947-1952

After the end of the second world war, political institutions of Poland were assigned to the political parties connected ideologically with the USSR. The office of the president functioned in Poland only between 1947 and 1952. On 4 February 1947 the sejm adopted a constitutional law concerning the appointment of the office of the president. The law anticipated the election of the president for the term of office of 7 years. It did not introduce any limits concerning the eligibility of the election of the same person for the next term of office. Before the end of the term of office, the office of the president could be vacated due to: death, renunciation of the function, adopting a resolution by the sejm recognizing the office of the president as vacated (if the President has not performed his function for at least 3 months). On 19 February 1947 the Small Constitution was passed. Its main characteristic was that formally it maintained the tripartition of power but in particular solutions it breached it as the President gained the rights beyond the scope of executive power. The partition of power was defined – the legislative power was given to sejm and the executive power – to the President elected for a 7-year term of office and to the government appointed by the President. The entitlements of the President included: representing the country, summoning and cancelling the sessions of the sejm, appointing and dismissing the members of the government, leadership of the armed forces and the clemency. However, in reality almost all the decisions were taken in the Political Bureau KC PPR. In that case the office of the President played a secondary role in relation to party functions.

The Legislative Sejm was supposed to deal with the development of the new Constitution. In fact, the works were undertaken within the framework of special teams appointed by the Political Bureau. Finally, in a text presented by the sejm to be approved, the institution of the President was not included. They were modelled on model approved by the USSR. On 22 July 1952 the sejm passed the law known as the Constitution of the People's Republic of Poland. Owing to this, the office of the President was removed.

After entering the constitution into force and after the new elections, the function of the President was replaced with the Chairman of the State Council.

2.4. PRESIDENT IN DEMOCRATIC POLAND 1989-PRESENT

Another chapter in the institution of the president started in the downward phase of socialism in Poland. Between 6 February and 5 April 1989 there were Round Table talks. It was a cycle of negotiations between the government and the democratic opposition which resulted in the change of the system in Poland. On 5 April 1989 the compromise by 'the Round Table' included three principles: the rules of future political system, the rules of the elections to the sejm and the rules concerning the election of the President by the National Assembly.

On 19 July 1989, the parliament elected the President of the People's Republic of Poland. The system position of the president as a new state authority was not strong. In addition, the person holding the office aroused controversies as it was the last socialistic leader of Poland. During his term of office, on 31 December 1989 the official name of the country was changed – from the People's Republic of Poland to the Republic of Poland. This was another step of the system change in Poland. The president appealed to the sejm to shorten his term of office along with the draft of the amendment of the constitution which proposed general elections. His term of office was supposed to end on the day of the new President taking over. The sejm adopted a law confirming that the new elections would take place by the end of 1990. On 27 September the sejm passed the law amending the Constitution of the Republic of Poland and the law on the election of the President of the Republic of Poland without adopting any major amendments. On 2 October 1990, after the publication of the journal of laws, the Marshal of the Sejm ordered the elections of the President of the Republic of Poland and established the date – 25 November 1990. It was the beginning of the present political system of Poland which stabilized the system position of the president. The most

¹ Kallas, M. (2018). *Historia ustroju Polski*. Warszawa, 98-102.

important change was the implementation of the rule to elect the president in general elections for the first time. Despite the fact that general elections of the head of the country are more characteristic for the presidential and semi-presidential systems, it was decided to implement it in Poland in order to emphasize the democratic character of the country¹.

The main resolutions concerning the institution of the president were defined in the Constitution Act from 17 October 1992 on mutual relations between legislative and executive powers of the Republic of Poland and the local government. It was so-called the Small Constitution. Under the Constitution, the duties of the president as the most supreme representative of the state in internal and international relations included: appointing the prime minister and the Council of the Ministers upon his request, general leadership in the scope of security and state defence as well as foreign policy, managing the works of the National Security Council, appointing and dismissing the Chief of Defence and other commanders, the right to introduce the martial law and the state of emergency, to ratify and terminate international agreements and many other entitlements. A special position of the president in the system of the executive power was connected with the assessment of the candidates for the ministers of the defence, foreign affairs and internal affairs. In fact, the most important ministers were defined as presidential departments as he has a real influence on their appointments².

The last change in the system position of the president is included in the present Constitution of the Republic of Poland which was adopted by the national assembly (a mutual session of the sejm and senate) on 2 April 1997. Actually, it repeated the resolutions of the Small Constitution which concern the mutual relations between particular authorities and institutions of the state. The basic change is connected with removing president's right to consult, that is a real influence on appointing any ministers. It is a significant weakening of the position of the president in relation to previous solutions. However, the provisions of the Small Constitution giving the president the rights to indicate the candidates for the ministers of defence, foreign affair and internal affairs bear the traits of the presidential or semi-presidential system. Present solutions are a comeback to the entitlements and competences of the president in the country with a parliamentary-cabinet political system. The institution of the president of the Republic of Poland is included in chapter V of the Constitution of the Republic of Poland of 2 April 1997³. This chapter consists of basic legal regulations which indicate the position of the president in a Polish political system. The entitlements towards particular types of power are not significant from the system point of view. With regards to legislative power, that is the sejm and the senate, the president calls the parliamentary elections, indicates the senior marshal (the oldest member of parliament who conducts the first session of the chamber in the new term of office), has the right to legislative initiative and the right to veto towards the laws. With regards to the relations inside the sphere of the executive power, that is towards the council of ministers, the competences of the president include: designating the candidate for the prime minister, handing in the acts of nomination and dismissal to the ministers, issuing orders of the laws adopted by the parliament and issuing resolutions but with a countersignature. The president also ratifies and signs the international agreements but he needs the countersignature. With regards to the judiciary power, the president appoints the judges upon a proper request and hands in nominations to the presidents of the courts and tribunals. Generally, the president upholds the constitution, he is the representative of the state abroad and is the leader of the armed forces⁴.

Basically, people performing the office of the president did not go beyond the legal framework of their competences. Depending on the system regulations, the position of the president was much or less stronger.

However, in the present term of office (2015-2020) one can notice a political activity of the president, who expands the scope of his prerogatives which do not result directly from the provisions of law. In Polish conditions after the presidential elections in 2015, a certain political and legal disagreement aroused, which started with the election of new judges of the Constitutional Tribunal by the parliament. The president

¹ Bożyk, S. (1995). *Wybory prezydenckie*. Białystok, 64-86.

² Kallas, M. (1990). *Konstytucja Polski*. Warszawa, 41-63.

³ Opaliński, B. (2014). *Rola prezydenta Rzeczypospolitej Polskiej w procesie stanowienia ustaw na tle praktyki ustrojowej Konstytucji III RP*. Warszawa, 21-37.

⁴ Modrzejewski, A. (2015). Presidency of Aleksander Kwaśniewski in Poland (1995-2005): competence, decision-making, and political thought. Blanka, Richova, Radosław, Kubicki and Aaron Walter (eds). *Rethinking the presidency, challenges and failures*. Trnava, 19-32.

reported a concern whether the judges were elected by the parliament in a correct manner. The crisis was caused by the interpretation of the article 21 of the law of 25 June 2015 on the Constitutional Tribunal: article 21, point 1 says: ‘A person elected as a judge of the Tribunal shall take the oath before the President of the Republic of Poland within 30 days of the election...’. It is a clear definition of the path of an appointed judge – a candidate elected by the parliament takes the oath before the president and then the adjudication commences in the Constitutional Tribunal. According with the legislative science, the provision of law includes a norm, an instruction and a sanction. Generally speaking, taking an oath is an example of a norm. The relation of the judge and the president concerning the oath (taking an oath by the judge and accepting it by the president) is an instruction. A sanction is included in the article 21, point 2 of the same act: ‘the refusal of taking the oath is equivalent to the renunciation of the position of the judge of the Tribunal’. However, the act does not anticipate any sanctions if the president does not accept the oath from the judge. It was the president’s refusal of an oath which started the discussion concerning the rights of the president in Poland. It seems obvious that the assumption of the act was the presumption of the necessity to accept the oath by the president. Despite the fact that it did not result directly from the provisions of law that the president has to accept the oath, the current practice was that after the election of a judge of the Constitutional by the parliament, taking an oath before the president was just a formality. By not accepting the oath, the president acted beyond the framework of the provisions of law and it seems that even though he did not breach the provisions (due to the fact that they did not anticipate such a situation), he acted not in accordance with the intention of the legislator. The reason for the discussion may be the consideration of the issue whether the situation occurred as a result of a poor quality of law or poor quality of a political culture understood as a entirety of the relations between particular elements of the system of the state power¹.

CONCLUSION

In the course of the political history of Poland, the institution of the president has gone through various stages of the hierarchy of the state authorities. As an element of the executive power, the president was legally equipped with limited competences and his election was done by the parliament. Then, a significant strengthening of the system role of the president occurred due to constitutional provisions. At present, a symbolic position of the president as an element of the system of the executive power is stronger as the president is elected in the general elections. It is no less than case that the institution of the president does not have a strong position in the provisions of law. However, the person holding the position of the president somehow expands his competences through an interpretation of law which is proper according to him. It seems that in a country with a parliamentary-cabinet system unlike the presidential or semi-presidential system the political role system significance of the president are limited. Nevertheless, as it is shown in the practice of the political life, the person performing the role of the president may not restrict himself to the role of an observer and has the possibility of a real influence on the state politics.

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¹ Skrzydło, W. (2013). *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa PWN, 52-87.