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**The significance of amendments to the March Constitution of
2 August 1926 and the Constitution of the People's Republic
of Poland of 7 April 1989 for political changes in Poland**

Keywords: constitutional amendment, Polish constitutionalism, correction of the state system

Słowa kluczowe: zmiana konstytucji, polski konstytucjonalizm, korekta ustroju państwa

Abstract

In August 1926 and April 1989 the Polish constitutions in force at that time were amended. Substantively these amendments have nothing in common, yet they have many common features, which the author of this article tries to show. In particular, the author draws attention to the fact that they have been used in a way that goes far beyond a formal system correction. The political practice based on them, which differed from the constitutional assumptions, brought fundamental changes in the political system and its evaluation has not been and still is not carried out from the point of view of observance of constitutional standards and the nature of undertaken actions, whether they were aimed to authoritarianism as after May 1926, or to democratization as after April and especially after June 1989.

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Streszczenie**Znaczenie nowelizacji Konstytucji Marcowej z 2 sierpnia 1926 roku i Konstytucji PRL z 7 kwietnia 1989 roku dla przemian politycznych w Polsce**

W sierpniu 1926 r. i w kwietniu 1989 r. znowelizowano obowiązujące wówczas polskie konstytucje. Merytorycznie nowelizacji tych nic nie łączy, mimo to mają wiele wspólnych cech, co stara się wykazać Autor artykułu. W szczególności zwraca uwagę na to, że zostały one wykorzystane w sposób daleko wykraczający poza formalną korektę ustroju. Oparta na nich praktyka polityczna odbiegająca od założeń konstytucyjnych przyniosła gruntowne zmiany ustrojowe a jej ocena nie była i do dzisiaj nie jest dokonywana z punktu widzenia przestrzegania norm konstytucji a charakteru podejmowanych działań, tego czy zmierzały one do autorytaryzmu jak po maju 1926 r., czy do demokracji jak po kwietniu a w szczególności po czerwcu 1989 r.

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I.

In August 1926 and April 1989 the Polish constitutions that were in force at that time were amended. These events are separated by more than half a century, they concern extremely different basic laws and occurred in completely different political circumstances. However, there are also a few elements that unite them, including the fact that they were a direct consequence of significant and spectacular historical events, and that they were used in a way that goes far beyond the formal correction of the political system they made. I would like to draw particular attention to the second of aforementioned aspects of the characteristics of the August amendment of 1926 and the April amendment of 1989².

² Both amendments to the Constitutions have been clearly described in the scientific literature, and therefore I feel relieved of the obligation to present their origins in detail and to carry out an in-depth legal analysis. For example, the amendment of 1926 was written in different periods and contains very different assessments of W. Komarnicki's study *Ustrój państwowy Polski współczesnej. Geneza i system*, Wilno 1937, pp. 80–88 and A. Gwiżdż, *Burżuazyjno-obszarnicza Konstytucja z 1921 roku w praktyce*, Warsaw 1956,

II.

The March Constitution of 1921 created a system of domination of the Parliament³, which in the lack of a permanent majority of the Parliament quickly became definitely ineffective. Compromise of solutions adopted in the Constitution brought a “wave of growing criticism”⁴. The discussion began almost immediately after the adoption of the constitution⁵. These were not only voices of politicians, but also representatives of then legal science, especially constitutionalists⁶. First of all, attention was drawn to the excessive limitation of executive power and unjustly privileging the Parliament at the expense of the Senate⁷. The crisis of parliamentary governance has enabled a successful coup. In April 1926, Józef Piłsudski made a public thesis on the

pp. 138–145. Contemporary publications include, for example, the following S. Krukowski, *Nowela sierpniowa z 1926 r.*, [In:] *Konstytucje Polski. Studia monograficzne z dziejów polskiego konstytucjonalizmu 2*, ed. M. Kallas, Warsaw 1990, pp. 121–139, or W.T. Kulesza, *Nowela sierpniowa z 1926 r.*, “Przegląd Sejmowy” 2006, No. 4, pp. 9–48. Immediately after the April amendment of 1989, it was written by e.g. F. Siemieński, *Kwietniowa nowela konstytucyjna 1989 roku*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1989, No. 4, pp. 1–22, and W. Sokolewicz, *Kwietniowa zmiana Konstytucji*, “Państwo i Prawo” 1989, No. 6, pp. 3–19, many years later e.g. P. Sarnecki, *Ustrój polityczny Polski po wejściu w życie ustawy konstytucyjnej z 7 kwietnia 1989 r.*, “Przegląd Sejmowy” 2009, No. 3, pp. 11–26, S. Rogowski, *Nowelizacje konstytucji z 22 lipca 1952 r. w latach 1989–1991*, “Studia z Dziejów Państwa i Prawa Polskiego” XII, Cracow–Lublin–Łódź 2009, pp. 309–330, T. Słomka, *Zmiany konstytucyjne w Polsce po 1989 roku do uchwalenia Konstytucji Rzeczypospolitej Polskiej*, “Kontrola Państwowa” 2009, No. 3, pp. 27–41, A. Bień-Kacała, *Rewizja czy zmiana konstytucji? (Charakter prawny nowelizacji konstytucji z 1989 r.)*, “Studia Iuridica Toruniensia” 2009, vol. VII, pp. 90–104.

³ W. Komarnicki calls it a system of “parliamentary absolutism” – *Ustrój państwowy Polski...*, p. 80.

⁴ D. Malec, *Zagadnienia administracji w Konstytucji marcowej. Uwagi z okazji 90. rocznicy uchwalenia Konstytucji z 17 marca 1921 r.*, “Przegląd Sejmowy” 2011, No. 1, p. 12.

⁵ See P. Sarnecki, *Ankieta o konstytucji z 17 marca 1921 „Czasopisma Prawniczego i Ekonomicznego” w procesie utrwalania konstytucji marcowej*, [In:] *Ankieta o Konstytucji z 17 marca 1921*, Warsaw 2014, reprint of Professor Władysław Leopold Jaworski’s book, which was first published in 1924, p. VII.

⁶ On the subject of scientific discussion that took place at that time, see W.T. Kulesza, *Nowela sierpniowa...*, pp. 16–23.

⁷ S. Krukowski, *Nowela sierpniowa...*, p. 123.

crisis of parliamentarianism in Poland⁸, and on 12 May his faithful military units entered Warsaw⁹.

Following the coup of August 2, 1926, a “law amending and supplementing the Constitution of the Republic of Poland of March 17, 1921¹⁰” was passed. The process of liquidation of parliamentary democracy has begun. The August amendment was only its “first stage”¹¹, formal expression of the correction of power balance in relations between the legislative and executive authorities¹². These amendments were aimed to strengthen the position of the Head of State, but within the existing system of government, its guiding principles, with the principle of separation of powers and parliamentary government at the forefront, were not called into question¹³.

By the way of the August amendment: The President was authorized to dissolve the Parliament and Senate with a motivated message at the request of the Council of Ministers “only once for the same reason” (at the same time, the right to dissolve the Parliament by its own resolution¹⁴) and the right to issue two types of decrees with the force of law (if necessary, in the period between the terms of office of the Parliament within the scope of state legislation with inclusions indicated in the Constitution and under the authority of law within the time and scope indicated by the law, except for amendment of the Constitution), strict time limits have been set, in

⁸ See R. Kraczkowski, *Rozporządzenia Prezydenta Rzeczypospolitej z mocą ustawy w latach 1926–1935*, Warsaw 2007, p. 10.

⁹ On the subject of events of May 1926, see A. Garlicki, *Przewrót majowy*, Warsaw 1979.

¹⁰ Dz.U. No. 78, item 442.

¹¹ See A. Garlicki, *Przewrót...*, p. 369.

¹² See A. Ajnenkiel, *Polskie konstytucje*, Warsaw 1982, p. 286.

¹³ See e.g. J. Kowalski, *Etapy zmiany ustroju państwa w II Rzeczypospolitej Polskiej (1918–1939)*, “Humanum” 2008, No. 1, p. 190 or W.T. Kulesza, *Nowela sierpniowa...*, p. 43.

¹⁴ Deprivation of the parliament’s right to self-dissolution was incidental (otherwise believed by A. Gwiżdż, *The Burżuazyjno-obszarnicza Konstytucja...*, p. 145). It was led by a mistake of the Marshal of the Parliament. Circumstances in which it took place are described in detail by I. Lewin: “In the result, the Marshal of the Parliament in a given matter violated the unanimous will of both the Parliament and the Senate, and deprived himself one by his oversight unjustly and improperly the Parliament prerogative of self-solvability, which no one wanted to take away and which none, even those seeking to strengthen and preponderance the executive of the May government, did not question”. – *Prawo rozwiązywania ciał ustawodawczych. Studium z prawa konstytucyjnego*, Lwów, p. 66.

which the budget had to be adopted (in case of non-observance, the President could have the budget announced in the wording given to him in the preceding stage of the legislative procedure, and even in the draft submitted by the government), the motion of censure was forbidden to vote at the same meeting at which it was submitted, and a sanction was introduced for violation of the ban on receiving benefits from the government by a member or senator.

Adopted solutions remained within the limits of parliamentary system, but at the same time created an opportunity for political transformations aimed to dictatorial or authoritarian governments¹⁵. In practice, this has been thoroughly exploited. The political experience of this period has been extensively described in the literature¹⁶. To put it simply, they came down to two issues. First of all, what Waław Komarnicki called the “reversed attitude” of government to the parliament¹⁷. It consisted in the fact that governments were formed and changed in isolation from the existing parliamentary majority¹⁸. Secondly, despite the fact that Art. 2 of the Constitution still proclaimed that “the Parliament and Senate are the bodies of Nation in terms of legislation”, in practice “an almost equal source of standards was the head of state, and in fact the government”¹⁹. Between 1926 and 1935, five legislative powers were granted to the President (August 2, 1926²⁰, March 17, 1932²¹, March 25, 1933²², March 15, 1934²³, and March 16, 1935²⁴). On their basis, the President issued 725 regulations²⁵. At the same time, only 732 laws were passed. “Legislative regulations of the President of the Republic of Poland have made the

¹⁵ A. Ajnenkiel, *Polskie...*, p. 286.

¹⁶ See S. Krukowski, *Nowela sierpniowa...*, pp. 137–139 and studies cited there.

¹⁷ *Ustrój państwowy Polski...*, p. 81.

¹⁸ M. Pietrzak, *Prezydent w konstytucjach polskich XX wieku*, [In:] *Demokratyczne świeckie państwo prawne*, Warsaw, p. 98.

¹⁹ R. Kraczkowski, *Rozporządzenia Prezydenta...*, p. 294.

²⁰ Dz.U. No. 78, item 443.

²¹ Dz.U. No. 22, item 65.

²² Dz.U. No. 29, item 249.

²³ Dz.U. No. 28, item 22.

²⁴ Dz.U. No. 28, item 215.

²⁵ Data based on a summary prepared by R. Kraczkowski, see. *Rozporządzenia Prezydenta...*, p. 313.

work of legal codification to a great extent, they have created a new legal order in the state as a whole.”²⁶

The August amendment itself did not change the principles of political system of the state, but thanks to the power balance created after the May coup, it became a tool that was effectively used for this purpose. Marshal Piłsudski was the actual holder of presidential powers, “and the president and government (since 1930 also the parliament) have fully subordinated to him.”²⁷

III.

An amendment to the Constitution of the People’s Republic of Poland of April 7, 1989²⁸ approved the results of negotiations at the “Round Table”²⁹, which had been concluded two days earlier. It was one of many amendments to the Constitution of the People’s Republic of Poland, but this time it was so significant that “within three years – despite the lack of new constitution – a qualitatively new political system was created.”³⁰ The doctrine does not agree whether it was a revision of the Constitution of the People’s Republic of Poland or only a partial change³¹. Although the Constitution introduced the office of the President of the People’s Republic of Poland (with

²⁶ W. Komarnicki, *Ustrój państwowy Polski...*, p. 87.

²⁷ Z. Witkowski, *Prezydent Rzeczypospolitej Polskiej 1921–1935*, Warsaw, Poznań, Toruń 1987, p. 181.

²⁸ The Act of April 7, 1989 on the Amendment of the Constitution of the Polish People’s Republic (Dz.U. No. 19, item 101).

²⁹ They started on February 6, 1989, but their origins go back to the events that took place many years earlier – see P. Raina, *Droga do „Okrągłego Stołu”. Zakulisowe rozmowy przygotowawcze*, Warsaw 1999.

³⁰ J. Karnaś, *Od modyfikacji ustrojowej systemu Polskiej Rzeczypospolitej Ludowej do demokratycznego państwa prawnego Rzeczypospolitej Polskiej*, “Zeszyty Naukowe Akademii Ekonomicznej w Krakowie” 2002, No. 611, p. 6.

³¹ The position that the April amendment was not a revision of the Constitution is presented e.g. by W. Orłowski, *Problem dwuizbowej struktury parlamentu w latach 1989–1997*, [In:] *Polska lat dziewięćdziesiątych. Przemiany państwa i prawa*, Lublin 1997, p. 67. Both amendments from the Constitution of the People’s Republic of Poland of 1989 are considered to be a revision of e.g. M. Zubik, *Doświadczenia okresu „prowizorium konstytucyjnego” a Konstytucja z 1997 r.*, “Europejski Przegląd Prawa i Stosunków Międzynarodowych” 2009, No. 1, p. 27.

very strong competences), the Senate, the National Council of the Judiciary and the Ombudsman, and amended the provisions concerning elections, the constitutional foundations of the socialist state were not violated. First of all, the principle of unity of power concentrated in the Parliament of the People's Republic of Poland as the highest body of state authority was formally maintained (Art. 20 of the Constitution of the People's Republic of Poland)³². The very appointment of the Senate and the office of the President of the People's Republic of Poland³³ was not compatible with it (this could at most be interpreted as "putting a question mark over the unity of power"³⁴), although the position of Parliament was significantly weakened (despite the fact that some of amendments were favorable to it)³⁵. What is more, after the amendment, the Constitution contained the entire system of protection against departure from the current system³⁶.

In mid-May 1989, Feliks Siemieński aptly predicted that the real meaning of April amendment would depend on the results of elections to the Parliament and Senate (summing up, he wrote that "in practice, it may be different"³⁷).

They were carried out on 4 and 18 June 1989 on the basis of ordinances to the Parliament and Senate³⁸ passed also on April 7, 1989, for which the most important provisions were division of seats in the Parliament – 35% for the opposition and 65% for those in power, and consent to free elections to the Senate. The election results were definitely beneficial for opposition³⁹. As a result, it was possible for the Parliament of the 10th term and the Senate of the

³² Although there were extreme differences of opinion about its actual functioning – see R. Mojak, *Instytucja Prezydenta RP w okresie przekształceń ustrojowych 1989–1992*, Warsaw 1994, pp. 93–94.

³³ See W. Orłowski, *Senat Rzeczypospolitej Polskiej w latach 1989–1991. Geneza instytucji*. Warsaw 2009, p. 63.

³⁴ J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warsaw 1999, p. 23.

³⁵ W. Sokolewicz, *Kwietniowa zmiana...*, p. 14.

³⁶ A. Bień-Kacała, *Rewizja czy zmiana...*, pp. 98–99.

³⁷ F. Siemieński, *Kwietniowa nowela...*, p. 14.

³⁸ Act of 7 April 1989 Electoral Law to the Sejm of the Polish People's Republic of the 10th term, for the years 1989–1993 (Dz.U. No. 19, item 102), Act of 7 April 1989 Electoral Law to the Senate of the Polish People's Republic (Dz.U. No. 19, item 103).

³⁹ See M. Raczkiewicz, *Wpływ wyborów z 4 czerwca 1989 roku na polski system polityczny*, "Studia Wyborcze" 2011, vol. XII, p. 86.

1st term to revise the Constitution in December⁴⁰. In the opinion of Paweł Sarnecki, the nation's decision made in these elections meant deconstitution-ization of its introduction and provisions directly determining the socialist nature of the state. "After that decision, they simply ceased to be used"⁴¹. Political practice, similarly as after 1926, fundamentally transformed the state's political system. However, this time it was a change in the opposite direction.

IV.

Substantively the constitutional amendments under discussion have nothing in common, and yet even this, which is necessarily very superficial, characterization indicates that they have many common features.

The very historical circumstances, which amendments were a normative expression, are still controversial. Both the May Coup and the Roundtable have never been, and still are not explicitly evaluated, and moreover, despite the passage of time, they still have their current political connotations. In both cases the premises for political changes were formed much earlier, but at the same time changes were not the result of a comprehensive political concept, but only made up for an immediate need. Both amendments were only the first step on the way to a comprehensive change of political system, adoption of new constitutions based on different assumptions. They were a compromise between the existing system and proposed wider changes. The August amendment was not an overturning of parliamentarianism and the April amendment was a break with the socialist nature of the state, but it facilitated the political actions that caused such effects. Thorough changes were brought by political practice that differed from the constitutional assumptions and its evaluation was not and still is not carried out from the point of view of formal observance of the constitution and the nature of undertaken actions, whether they aimed to authoritarianism as after May 1926 or to democratization as after April and especially after June 1989.

⁴⁰ The Act of 29 December 1989 on the Amendment of the Constitution of the Polish People's Republic (Dz.U. No. 75, item 444).

⁴¹ P. Sarnecki, *Ustrój polityczny...*, p. 14.

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