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The constitutionalization process of political parties in Poland. Party system evolution after 1918

Keywords: political parties, Poland, constitutionalization, party system

Słowa kluczowe: partie polityczne, Polska, konstytucjonalizacja, system partyjny

Abstract

This article analyzes the constitutionalization process of political parties in Poland and the evolution of party system in the years 1918–2018. It is an analysis of political parties in Poland that draws on political science methods and legal studies methodology.

We use a concept by Heinrich Triepel, who constructed a four-phases model of relations between parties and the state. The phases are: the abatement of parties (*Stadium der Bekämpfung*), the ignoring of parties (*Stadium der Ignorierung*), acknowledgement and legalization (*Periode der Anerkennung und Legalisierung*) and constitutional incorporation (*Ära der verfassungsmässigen Inkorporation*). Upon regaining its independence in 1918, Poland entered the third phase. It was not until 1989 that Poland entered the phase of constitutionalization of parties. The methods we employ are historical analysis, document research and comparative analysis.

In the article we discuss the evolution of Polish party system and divide it into periods: first spanning from 1918 till 1939, second starting in 1944 and ending in 1989, the

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last one beginning in 1990. We conclude that the party system in Poland after 1989 underwent a long process of changes. It moved from a system of extreme party fragmentation to a system of imperfect bipartisan competition. What is more, the process of stabilization of electoral law and the institutionalization of political parties contributed greatly to the consolidation of the Polish party system.

Streszczenie

Proces konstytucjonalizacji partii politycznych w Polsce. Ewolucja systemu partyjnego po 1918

Artykuł dotyczy procesu konstytucjonalizacji partii politycznych w Polsce w latach 1918–2018 oraz ewolucji systemu partyjnego. Stanowi on studium prawnopolitologiczne funkcjonowania partii politycznych w Polsce.

W analizie wykorzystana została przede wszystkim koncepcja Heinricha Triepela, który ujął relację między państwem a partiami w 4 stopniowym podziale: stadium zwalczania (*Stadium der Bekämpfung*), ignorowania (*Stadium der Ignorierung*), uznawania i legalizacji (*Periode der Anerkennung und Legalisierung*) oraz konstytucyjnej inkorporacji (*Ära der verfassungsmässigen Inkorporation*). Polska odzyskując niepodległość 1918 roku weszła od razu w trzecie stadium, natomiast dopiero po drugiej wojnie światowej w stadium konstytucjonalizacji partii. Wykorzystane metody badawcze to analiza historyczna, analiza dokumentów oraz porównawcza.

W artykule omówiono etapy rozwoju systemu partyjnego dzieląc je na etap dwudziestolecia międzywojennego 1918–1939, lata 1944–1989, okres lat 1990–2018. Konstatując, system partyjny w Polsce po 1989 roku podlegał długotrwałemu procesowi zmian i ewoluował od systemu sfragmentaryzowanego do systemu z niedoskonałą rywalizacją dwupartyjną. Stopniowy proces stabilizacji regulacji prawnych dotyczących wyborów oraz instytucjonalizacja partii politycznych przyczyniły się do konstytucjonalizacji systemu partyjnego.

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I. Introduction

Heinrich Triepel, in his work *Die Staatsverfassung und die politischen Parteien* first published in 1927, constructed a four-phases model of relations between parties and the state. The phases are: the abatement of parties (*Stadium*

der Bekämpfung), the ignoring of parties (*Stadium der Ignorierung*), acknowledgement and legalization (*Periode der Anerkennung und Legalisierung*) and constitutional incorporation (*Ära der verfassungsmässigen Inkorporation*). For him a political party is an association established with the aim of gaining power in order to attain political goals. Gradually, with the process of enfranchisement in the XIX century political parties became the fundament of representative democracy.

In the first phase, following the thought of J.J. Rousseau, parties were seen as a “hostile element” between a group of citizens and the whole nation – element that distorted nation’s will. In the next phase – Ignorierung, at first, law ignored the existence of parties but soon the political reality made it impossible. What authorities did was to enact laws that forbid the existence of some types of parties, without trying to fight all of them. In the third phase what was being pursued was influencing party politics. Acts, statutes and other regulations formally recognized the existence of political parties in and outside of parliaments (one of the first signs of the change were Primary Elections regulations in the USA). The fourth phase of constitutional incorporation means not only freedom of association and assembly but also designing elaborate regulations pertaining to the functioning of political parties. Those processes do not necessarily need to lead to direct expression of the role of the political parties in the creation of the government and political decision making in the constitution.

In the XIX century Poland was partitioned. That is why freedom of association, at first pertaining only to associations and not political parties was regulated by Austrian, German and Russian law. Polish lands under the partition of the Habsburg Empire adopted The Law of Association Right from 5th November 1867. In the Kingdom of Prussia freedom of associations was granted in the constitution from 1871, then the Act on Associations from 9th April 1908 developed the rules for associations³. The most significant regulations for institutionalization of political organizations in Poland were introduced in the Russian Empire. Upon regaining its independence in 1918, Poland based its regulations on Russian ones. The most important provisions worth mentioning are

³ M. Chmaj, M. Zmigrodzki, *Status prawny partii politycznych w Polsce*, Toruń 1995, pp. 29–30.

ones from the XIV volume of the Book of Laws from 1906, pertaining to illegal and secret associations⁴. After 1918 Poland entered the third phase. It was not until 1989 that Poland entered the phase of constitutionalization of parties.

II. Constitutionalization process of political parties in Poland

II RP did not have separate acts that regulated the functioning of political parties. Both Constitution from 1921, and Constitution from 1935 regulated only right to association. By the power of the act from 3rd January 1919, all associations were to be registered. And before a new act was enacted, it was to be done according to the rules set in the Russian Act from 1906⁵. The next phase of the institutionalization of political parties in Poland began with the enactment of *Prawo o stowarzyszeniach* from 27th October 1932 (presidential ordinance). It was supplemented with two additional documents – ordinances of the Home Office Minister: *O rejestracji stowarzyszeń* from 10th December 1932 and *O przystosowaniu stowarzyszeń i spraw będących w toku do przepisów prawa o stowarzyszeniach* from 7th December 1932. Article 1 of the presidential ordinance stated that “Polish citizens have the right to form associations which aims, organization and actions do not break the law and do not endanger the public safety”. It also forbid the formation of associations which members would be fully subjugated to the association’s executives and associations that linked political and physical fitness goals (to prevent the creation of paramilitary organizations). The act mentioned 3 types of associations: regular, registered and working for public well-being⁶.

Between 1944–1989 the legal status of political organizations was complicated. As M. Chmaj and M. Żmigrodzki note, “whether a particular party’s actions were deemed legal or illegal depended not on the legal provisions but on the will of the centre making the decisions”⁷. Communists, in power till 1989, accepted only small and subordinate parties. Regulations from 1932 pertaining to associations were repeatedly amended.

⁴ M. Chmaj, *Prawna instytucjonalizacja partii politycznych w Polsce*, Lublin 1994, pp. 37–38.

⁵ M. Chmaj, M. Żmigrodzki, *Status prawny partii...*, p. 37.

⁶ P. Suski, *Stowarzyszenia i fundacje*, Warsaw 2008, pp. 24–25.

⁷ M. Chmaj, M. Żmigrodzki, *Status prawny partii...*, p. 37.

Till the amendment of the Constitution in 1976, legal status of political parties had been regulated only by normative acts of special character⁸. The Communist Party was deemed to be “the leading force of the society in the building of socialism”. The Constitution also defined relations between the communist party – PZPR (Polish United Workers’ Party) and United People’s Party, Democratic Party and Patriotic Movement for National Rebirth (since 1983). P. Winczorek notes that their constitutionalization proved that the presidential ordinance from 1932 was not respected⁹. § 3 of the Art. 3 of the Constitution from 1952 was supplemented with the word “party” without any definition of it.

Next important step was the compromise reached during the Round Table discussions in 1989. It assumed the functioning of opposition organizations as associations and not parties, but it initiated the process of political transformation in the direction of political pluralism. A symbolic end to the previous period was the changing of the Constitution in December 1989. The phrases about the leading role for the PZPR were removed. A new provision had been introduced: “Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means”. Constitutional Tribunal was granted power to rule whether a political party’s goals or action stand in opposition to the Constitution¹⁰.

After first parliamentary election, not fully free, on 28th July 1990 an act on political parties was adopted. In Art. 1 a provision was added, that party’s goal is to “take part in public life, especially by exerting an influence on the formulation of the state policy and governing”. New law was too vague and general (the whole act consisted of 6 articles)¹¹.

Already in 1989, provisions of the new constitution were being discussed. On 17th October 1992 the so called Small Constitution was adopted. It advanced a rationalized parliamentary model¹². On 2nd April 1997 National Assembly

⁸ M. Chmaj, *Prawna instytucjonalizacja partii...*, p. 43.

⁹ P. Winczorek, *Status prawny partii politycznych*, “Prawo i życie”, 8 października 1988.

¹⁰ M. Chmaj, M. Zmigrodzki, *Status prawny partii...*, p. 40.

¹¹ M. Chmaj, *Prawna instytucjonalizacja partii...*, p. 50; M. Chmaj, M. Zmigrodzki, *Status prawny partii...*, p. 58.

¹² L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2015, p. 31.

adopted the latest Constitution. In accordance with Art. 11 freedom of the creation and the functioning of political parties is guaranteed¹³. In accordance with Art. 11 “The Republic of Poland shall ensure freedom for the creation and functioning of political parties. Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means”. It is worth noting, that Art. 13 of the Constitution forbids the existence of political parties “whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism”¹⁴.

On 27th June 1997 a new act on political parties was introduced. Its provisions contained regulations granting the Constitutional tribunal right to check whether political party’s aims and actions are not breaking the Constitution.

Summing up, in Poland, the full process of constitutional incorporation of parties (Ära der verfassungßmasigen Inkorporation), as in H. Triepel’s conception, was possible only after 1989, with the passing of the Constitution from 1997.

III. Evolution of party system in the years 1918–2018

After regaining its independence Polish political system was characterized by a multi-party political scene¹⁵. It was caused by a number of factors: complex social structure of Polish society divided into social classes, multinational character of the society and differences caused by functioning under three distinct political entities during the partition period¹⁶. By the court ruling, since 1919, Communist Party was banned.

Political parties that functioned in the Second Polish Republic could be divided into right, centre and left. Since 1922 also national minorities parties started to form¹⁷.

¹³ *Prawo konstytucyjne*, ed. Z. Witkowski, Toruń 2013, pp. 99–101.

¹⁴ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2012, pp. 113–121.

¹⁵ A. Ajnenkiel, *Konstytucje Polski 1791–1997*, Warsaw 2001, p. 158.

¹⁶ J. Bardach, B. Leśniadorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warsaw 1994, pp. 488–489.

¹⁷ *Ibidem*, p. 489.

The main strength on the right was National Democracy, formed in the end of the XIX century. In 1919 it changed its name to National Populist Union, in 1928 it changed its name again to National Party. Its leader was Roman Dmowski. Main tenets of its program were linked to national ideology and solidarity of the Polish society. After the May Coup in 1926 the organization gained an undemocratic trait.

In opposition to National Party was a group of people working closely with Marshal Józef Piłsudski. After the May Coup they created a political party – Nonpartisan Bloc for Cooperation with the Government. It encompassed a lot of social groups. Among its main goals was to curtail the parliamentary powers and strengthen the government.

The party mosaic of the Polish interwar period was enriched by a couple of people's parties, which formed People's Party in 1931. Christian Democracy was represented mainly by Polish Christian Democratic Party, which joined forces with National Workers Party in 1937 to create Labour Party. Labour movement was also divided. The biggest was Polish Socialist Party. After the coup in 1926, the aforementioned organizations became opposition to Józef Piłsudski.

After Second World War political parties tried to rebuild themselves. However, with the passing of the Constitution in 1952, Poland became an undemocratic state under the rule of the Communist Party¹⁸.

After 1989, the democratization of political system in Poland led to the adoption of political pluralism principle. On 28th July 1990, the first act on political parties was adopted. The document allowed the functioning of both registered and non-registered parties. The aim of such legal solutions was to attain as broad participation in elections as possible. In 1997 the constitution was adopted and along it also another act on political parties. It entailed more formal requirements and registration of parties. New legal acts led to the development of a multipartisan system in Poland.

An important role in the evolution of Polish party system after 1989 was played by the instability of the Sejm electoral system¹⁹. Out of the five par-

¹⁸ M. Chmaj, *Restytucja i petyfikacja zasady pluralizmu politycznego w Polsce*, [In:] *Dwadzieścia lat transformacji ustrojowej w Polsce*, ed. M. Zubik, Warsaw 2010, pp. 357–358; A. Czubiński, *Historia Polski 1864–2001*, Wrocław 2002, pp. 224–325.

¹⁹ A. Antoszewski observed, the most evident characteristic of the process of development of electoral democracy in Poland is the instability of the Sejm electoral system: A. Antosze-

liamentary elections in the 1989–2001 period, only two were organized on the basis of the same election ordinance. Since 2005, the rules of organizing elections have been similar. Now all regulations can be found in the Electoral Code of 5th January 2011²⁰. The instability of electoral regulations has led to greater instability of the party system. One can discern three stages of the evolution of the party system in Poland after 1989²¹.

First stage, in the years 1989–1993, saw the disintegration of important during the first years of transformation political movements such as *Solidarność* and post-communist left wing. Apart from the 1989 election, a proportional election formula was applied in Sejm elections. In the parliamentary election in 1991 the country was divided into 37 electoral districts receiving 7 to 17 seats each²². Out of the 460 Sejm seats, 69 were divided into party lists at the national level using the modified Sainte-Laguë method. To receive extra seats an entity had to get at least 5% of votes nationwide or attain seats in at least 5 electoral districts. However, most of the seats were allocated to lists at the electoral district level with the use of the Hare-Niemeyer method. There was no threshold at this level. Such a construction of methods, considered to favor weaker parties, led to the division of seats in Sejm between 29 electoral committees. A minimum share had not been established. All this led to a high level of party fragmentation and difficulties with forming a stable cabinet.

Second one, in the years 1993–2004, was the stage of natural two-block character based on the influence of post-communist division. It began with the adoption of a new Sejm election ordinance and an early election. The number of electoral districts was increased up to 52 and three election thresholds were introduced: 5% of votes for a political party, 8% for an electoral coalition nationwide, and 7% for the national list. The methods of seat allocation used in earlier elections were replaced with the D'Hondt method. The election resulted in power alternation. Left wing parties – Democratic Left Al-

wski, *Ewolucja systemu wyborczego do Sejmu*, [In:] *Demokratyzacja w III Rzeczypospolitej*, ed. A. Antoszewski, Wrocław 2002, p. 51.

²⁰ K. Skotnicki, *Kodeks wyborczy. Wstępna ocena*, Warsaw 2011.

²¹ W. Wojtasik, *System partyjny i partie polityczne w procesie transformacji systemowej*, [In:] *Transformacja systemowa w Polsce 1989–2009. Próba bilansu*, eds. R. Głajcar, W. Wojtasik, Katowice 2009, pp. 152–153.

²² R. Alberski, *Wpływ systemu wyborczego na proces zmiany systemu partyjnego w Polsce w latach 1991–2007*, [In:] *Transformacja systemowa w Polsce...*, p. 140.

liance (*Sojusz Lewicy Demokratycznej*, SLD) and Labour United (*Unia Pracy*, UP) – were the winners of the election. They formed the government with the pivotal Polish Peasants' Party (*Polskie Stronnictwo Ludowe*, PSL) whereas a number of right wing parties were left out. SLD was overrepresented, receiving 20.4% of votes but 37.17% seats²³.

Third stage, starting with the year 2004 meant the marginalization of the post-communist left wing and dominance of right wing parties. In 2001 two new political parties were established – Civic Platform (*Platforma Obywatelska*, PO) and Law and Justice (*Prawo i Sprawiedliwość*, PiS). They replaced earlier coalitions. Law and Justice began a gradual process of dominance of right wing forces in Polish party system with the marginalization of the left wing. What is important for this phase is the stabilization of electoral rules in 2005. This, again, led to substantial changes in the party scene. The 2005 election proved to be of a great consequence for the contemporary Polish party system²⁴. PiS redefined the main dimension of party competition, replaced historical and cultural differences that previously underlined it with economic ones²⁵. Since 2005, the division into the 'liberal Poland' identified with PO and the 'solidary Poland' of PiS has become clearer for the voters than the division into left and right wing. This has been proven by Research of the Polish General Election Survey²⁶. Political competition between two post-Solidarność parties, PiS (the right-wing) and PO (the centre-right) is now a characteristic feature of Polish party system. It also makes it different from the contemporary standards of western democracies. This direction of changes has been confirmed by the parliamentary election in 2015. PiS was the unquestionable winner. It received the absolute majority of seats in the Sejm and became the first party that gained independent majority in the parliament after 1989²⁷.

The contemporary Polish party system is also characterized by the emergence of populist political forces, such as Palikot Movement (*Ruch Palikota*),

²³ R. Glajcar, *System wyborczy w Polsce*, [In:] *Ustrój polityczny RP, Wprowadzenie*, eds. R. Glajcar, J. Okrzesik, W. Wojtasik, Bielsko-Biała 2006, p. 32.

²⁴ R. Markowski, *Wybory 2005 – chaos czy restrukturyzacja systemu partyjnego?*, [In:] *Wybory 2005. Partie i ich programy*, eds. by I. Skłodowska, A. Dołbakowska, Warsaw 2006, p. 18.

²⁵ A. Paczeński, *Europeizacja polskich partii politycznych*, Warsaw 2014, p. 84.

²⁶ *Ibidem*.

²⁷ In the 2007–2015 period, PO existed as a political coalition with PSL.

Kukiz'15, Modern (*Nowoczesna*), or in the past, Self-Defence (*Samoobrona*). They evolved from the common dissatisfaction. What is important to note, though, is that the aggregation level of support for the two main political parties is growing. Some advantageous changes in the system also include the power alternation process – first between the right and left wing, and now, between PIS and PO.

As a negative feature of Polish transformation one can consider the low level of participation in election²⁸. Another negative characteristic is the high level of electoral volatility²⁹. Also, what may be considered as a feature of the established system, are very antagonistic relations between main political parties.

IV. Conclusions

The party system in Poland after 1989 was subject to a long process of changes. It evolved from the system of extreme party fragmentation up to imperfect bipartisan competition. The stabilization of electoral law regulations and the institutionalization of political parties contributed to the consolidation of the party system. Along these changes the process of constitutionalization of political parties evolved. First, by the introduction of the political pluralism principle, then by strengthening it with provisions found in the Act on Political Parties from 1990. Transformation period of the Polish system has been supplemented with the passing of the Constitution in 1997.

In the years 1918–2018 the full constitutionalization of political parties has been completed only in the last thirty years. It has been a complex and difficult process, conditioned by a thorough political transformation. It is important to note, that during the hundred years of Polish independence, the state has been democratically governed for only 35 years. The lack of continuity of the state, authoritarian regime initiated after the coup in 1926 and the communist system introduced in Poland after 1945 have all exerted a great influ-

²⁸ A.K. Piasecki, *Wybory w Polsce 1989–2011*, Cracow 2012, p. 203.

²⁹ Between 1993 and 2005, electoral volatility between blocks almost doubled: R. Markowski, *System partyjny czy zbiorowisko partii? O stabilnym rozchwianiu polskiej polityki*, [In:] *Wymiary życia społecznego. Polska na przełomie XX i XIX wieku*, ed. M. Marody, Warsaw 2007, pp. 248–249.

ence on the process of constitutionalization of political parties and formation of the party system.

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