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Power of Authority. A few words about the Chief of State one hundred years ago and the present

Keywords: authority, Chief of State, Józef Piłsudski, Jarosław Kaczyński

Słowa kluczowe: autorytet, Naczelnik Państwa, Józef Piłsudski, Jarosław Kaczyński

Abstract

It would seem that the function of the Chief of State is of purely historical significance and connected with the role played by Józef Piłsudski in the restoration of Polish statehood one hundred years ago. Recently, however, the concept of the Chief of State appears as a publicist figure regarding Jarosław Kaczyński, the leader of the Law and Justice (PiS). In this essay, the authors would like to evaluate the accuracy of such a comparison. According to their observations, the labelling the current PiS leader as the Chief of State is definitely inadequate. It follows from the fact that his contemporary influence on the functioning of the state is not supported by either personal services or performing state functions. It is based on mythical categories, built on emotions and instruments of historical politics, rather than on real systemic circumstances.

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Streszczenie**Siła autorytetu. Kilka słów o Naczelniku Państwa
sto lat temu i naszych czasów**

Wydawać by się mogło, że funkcja Naczelnika Państwa ma znaczenie czysto historyczne i związana jest z rolą, jaką odegrał Józef Piłsudski w odrodzeniu polskiej państwowości sto lat temu. Jednak ostatnio Naczelnik Państwa pojawia się jako figura publicystyczna w odniesieniu do Jarosława Kaczyńskiego, lidera Prawa i Sprawiedliwości. W niniejszym eseju autorki chciałyby ocenić trafność takiego porównania. Stosownie do ich obserwacji, określanie obecnego lidera PiS mianem Naczelnika jest zdecydowanie nieadekwatne. Jego obecny wpływ na funkcjonowanie państwa nie jest bowiem poparty osobistymi zasługami ani pełnieniem funkcji państwowych. Opiera się raczej na kategoriach mitycznych, zbudowanych na emocjach i instrumentach polityki historycznej, niż realnych uwarunkowaniach ustrojowych.

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I.

It would seem that the function of the Chief of State (*Naczelnik Państwa*) is of purely historical significance and connected with the role played by Józef Piłsudski in the restoration of Polish statehood one hundred years ago. Recently, however, the concept of the Chief of State appears as a publicist figure regarding Jarosław Kaczyński, the leader of the Law and Justice (PiS)³. For that reason, in this essay, we would like to evaluate the accuracy of such a comparison.

³ Jarosław Kaczyński was presented in this way, e.g. during the celebrations organized by the National Party (*Stronnictwo Narodowe*) on 11 November 2016 at the monument of Roman Dmowski in Plac na Rozdrożu, <https://wiadomosci.onet.pl/kraj/jaroslaw-kaczynski-zapowiedziany-jako-naczelnik-panstwa/jvest9> (11.11.2018); similarly in Paweł Kukiz' statement in: "Kropka nad I" on TVN 24, <https://dorzeczy.pl/kraj/21515/Kukiz-Najwazniejszy-w-Polsce-jest-Jaroslaw-Kaczynski-To-naczelnik-panstwa.html> (11.11.2018). Tomasz Sakiewicz, in turn, referred to the "velvet Chief", "actually governing the State", <http://televizjarepublika.pl/sakiewicz-nie-balbym-sie-dzisiaj-nazywac-kaczynskiego-naczelnik-panstwa-moj-pilsudski-cykl-wywiadow-strona-3,45335.html> (11.11.2018).

II.

In our considerations, the significant question is authority, understood as the ability to persuade certain behaviors. It is perceived as an exclusive prerogative, i.e. an exclusive justification for believing in a given statement or for acting in accordance with the statements. Authority can be associated with a person or the power structure. Therefore, it will be personal authority or formal (official) authority, respectively⁴. For the purposes of this essay, we assume that personal authority is closely related to charisma of an individual, while formal authority results from the function performed, embedded in the structures of power. In the context of this distinction, we can observe two variants. Firstly, the situation in which a specific conjunction occurs, i.e. a combination of both types of authority, so when the established leader has at the same time personal charisma. The second situation – the alternative – occurs when a charismatic individual does not perform an official function or when a person holding a prominent office is deprived of charismatic personal traits.

Establishment of an authority and its consolidation requires a specific basis or a foundation (for H. Arendt⁵). In the case of Józef Piłsudski, the “starting point” was his involvement in the independence activities and participation in the War as the Commander of the Legions, the oath crisis and the internment in Magdeburg. These events made him a symbol of resistance against all partitioners⁶. In the case of Jarosław Kaczyński, the search for unambiguous sources does not bring the expected results. A wider role in politics was played by Lech Kaczyński, recognized as an activist of NSZZ Solidarity (*NSZZ Solidarność*) and then as an official of important state offices: the president of the Supreme Chamber of Control (*Najwyższa Izba Kontroli*), the Minister of Justice and ultimately the President of the Republic of Poland. Jarosław Kaczyński remained a peculiar demiurge in the shadow of his twin brother, with a short incident of serving as the Prime Minister between July 2006 and November 2007. The change was brought by the Smolensk plane crash

⁴ A. Młynarska-Sobaczewska, *Autorytet państwa. Legitymizacyjne znaczenie prawa w państwie transformacji ustrojowej*, Toruń 2010, pp. 29–30.

⁵ H. Arendt, *O rewolucji*, Warsaw 2003, pp. 252–253.

⁶ I.e. Prussia, Russia and Austria. Partitions of the Polish old Republic took place in 1772, 1793 and 1795. As a result, Poland disappeared from maps of Europe for over 100 years.

in 2010, when Jarosław Kaczyński, after his brother's death, became a candidate in presidential elections. So far, this has been the last attempt of assuming a formal position. After the 2015 elections, Jarosław Kaczyński, describing himself as a "ordinary" ("private") member of parliament, did not become the Prime Minister, nor did he even become part of the government. Nevertheless, he is the undisputed leader of the ruling camp.

The subject-relevant authorities grew from different grounds. However, the parallels can be traced in the context of special circumstances that accompanied the rise of these authorities (the atmosphere of danger, crisis and fears about the future of the state). In the case of Piłsudski, that era had real premises in the form of building statehood in difficult post-war realities and in the face of uncertain economic situation. One hundred years later, in turn, we are dealing more with driving the atmosphere of fear (e.g. the European economic crisis, migration crisis, terrorist attacks), rather than with a direct danger for Poland. At all events, the threat (real or imaginary) raises and develops the need to have a leader who would guide the fate of the state and the nation and overcome crises.

III.

Historically, such a person was the leader of the Kościuszko Insurrection of 1794 – the Supreme Commander of the Polish National Armed Forces was entrusted to Chief of State, Tadeusz Kościuszko. This institution returned on the verge of independence. On 11 November 1918, the Regency Council first entrusted "brigadier" Józef Piłsudski with a military authority⁷, and on 14 November, it decided to dissolve itself and, to ensure the uniformity of power, hand it over to the Supreme Commander⁸. On 22 November, with the countersignature of the President of the Ministers, Piłsudski issued a decree under which he was to serve as the "Temporary Chief of State" until the Sejm would

⁷ Message of the Regency Council regarding the transfer of the supreme command of the Polish army to Brigadier Józef Piłsudski (Dz.P.P.P. 1918, No. 17, item 38).

⁸ Message of the Regency Council regarding the dissolution of the Regency Council and transfer of the Supreme State Authority to the supreme commander of the Polish army, Józef Piłsudski (Dz.P.P.P. No. 17, item 39).

be called⁹. After the elections in January 1919, the Legislative Sejm adopted the Resolution “on entrusting Józef Piłsudski with the continuation of the office of the Chief of State,”¹⁰ thereby establishing a transitional regime based on the domination of the Sejm. The March Constitution of 1921¹¹ replaced the office of the Chief of State with the classical presidency. Piłsudski refused to apply for the office of President, declaring that according to the Constitution, this office was burdened only with responsibility and deprived of real power¹².

After the assassination of President Narutowicz, Piłsudski moved away from the institutionalized politics, going for a specific retirement to his property in Sulejówek. He remained the key authority for a wide circle of people: the comrades-in-arms, co-workers from the time of the post of the Chief of State, as well as for the masses within the society who saw in him the father of independence and its savior in Polish-Soviet War of 1920. In May 1926, a coup d'état took place. Piłsudski, by using force and non-constitutional means, demanded that incumbent President Wojciechowski resign from office; the President refused to fulfill this request. After a few days of fighting in the streets of Warsaw, the legal government and the President handed in their resignation, and the duties of the latter, in accordance with the Constitution, were taken over by the Marshal of the Sejm. Piłsudski appointed a new Prime Minister.

It was expected that the National Assembly would elect Piłsudski as the President. In the vote on 31 May, Piłsudski received the required majority of votes, but he resigned from the post. The election should be interpreted as an obvious attempt to legalize the coup. In a letter to the Marshal of the Sejm after the election, Piłsudski described this in the following way: “For the sec-

⁹ Decree of the Chief of State with the highest representative power of the Republic of Poland (Dz.P.P.P. No. 17, item 41). See also: K. Prokop, *Pozycja ustrojowa Tymczasowego Naczelnika Państwa (1918–1919)*, [In:] *Potentia non est nisi ad bonum*, eds. M. Serowaniec, A. Bień-Kacała, A. Kustra-Rogatka, Toruń 2018, pp. 625–640.

¹⁰ Resolution of the Sejm of February 20, 1919, on entrusting Józef Piłsudski with the continuation of the office of the Chief of State (Dz.P.P.P. No. 19, item 226). Cf. W. Kulesza, *Uchwała Sejmu Ustawodawczego z 20 lutego o powierzeniu Józefowi Piłsudskiemu dalszego sprawowania urzędu Naczelnika Państwa*, “Przegląd Sejmowy” 2007, No. 5, pp. 33–56.

¹¹ Constitution of the Republic of Poland of 17 March 1921 (Dz.U.R.P. No. 44, item 267).

¹² Na posiedzeniu Rady Ministrów 4 grudnia 1922. *Za Dziesięciolecie Polski Odrodzonej 1918–1928*, ed. M. Dąbrowski, Cracow–Warsaw 1928, p. 181.

ond time in my life I have legalized my activities and historical works.” He stated, however, that he “cannot live without a direct work, when the existing Constitution moves this work away from the President”¹³. He nominated Mościcki to this position, who obtained support of the National Assembly¹⁴. Soon after, the Constitution itself was reviewed, which strengthened the President’s competences, inter alia by legislative privileges¹⁵.

Piłsudski assumed the position of the Minister of Military Affairs and the General Inspector of the Armed Forces. After 1926, he served as the Prime Minister two times, more often he remained at the ministerial position. He was, however, the undisputed leader of the Nonpartisan Bloc for Cooperation with the Government (*BBWR*). He personally made reshuffles in the prime ministerial and ministerial positions, which was almost caricatured on the pages of Felicjan Sławoj Składkowski’s “The scraps of reports”¹⁶. Despite this decision-making exclusivity, Piłsudski was in fact not responsible, as proved by the case of Minister of Treasury Czechowicz, pending before the State Tribunal in 1929. On Piłsudski’s (then: Prime Minister’s) request, Czechowicz transferred almost PLN 600 million for the purposes not provided for in the budget, without a legal basis¹⁷. Before the State Tribunal, Piłsudski called the accusation against Czechowicz as “a nonsense of the Sejm,” whereas the Act on the State Tribunal as “funny” and “bungled”¹⁸. The Tribunal omitted delivery of the judgement by suspending the proceedings “until the Sejm would issue a resolution containing a substantive assessment of the [...] questioned loans.” Sejm, being aware that in fact it would have to bring an accusation against Piłsudski, never delivered such a resolution.

¹³ “Gazeta Administracji i Policji Państwowej”, 5 czerwca 1926, No. 23.

¹⁴ Report on the transfer of power by the Speaker of the Sejm Maciej Rataj to the President of the Republic of Ignacy Mościcki, 4 June 1926 (Dz.U.R.P. No. 56, item 327).

¹⁵ Act of 2 August 1926 amending and supplementing the Constitution of the Republic of 17 March 1921 (Dz.U.R.P. No. 78, item 442), Act of 2 August 1926 authorizing the President of the Republic to issue decrees with the force of law (Dz.U.R.P. No. 78, item 443).

¹⁶ F. Sławoj Składkowski, *Strzępy meldunków*, Warsaw 1936.

¹⁷ The relevant letter of Piłsudski is quoted by A. Garlicki, *Józef Piłsudski 1867–1935*, Warsaw 1988, s. 537. Cf. also Sprawozdanie stenograficzne z 59 posiedzenia Sejmu Rzeczpospolitej z 20 marca 1929 r.

¹⁸ Oświadczenie Józefa Piłsudskiego przed Trybunałem Stanu, Warsaw 26 czerwca 1929. Cf. Sprawa Gabriela Czechowicza przed Trybunałem Stanu: wybór dokumentów, Warsaw 1961.

Therefore, the Marshal was formally a member of the government, but in fact he was making decisions alongside the government or above it. The source of legitimacy were the earlier military achievements, the period of serving as the Chief of State and eventually, the social acceptance of the May coup¹⁹. It can be argued that in this period, the source of his political influence remained largely a personal authority, simultaneously framed by a peculiar legend, both from the bottom and above. The name day of the Marshal was solemnly celebrated, as well as the date of 6 August – the anniversary of the march of the First Cadre Company from Cracow's Oleandry in 1914, the date of 15 August – the anniversary of the Battle of Warsaw 1920 and from November 1937 – the date of 11 November, Independence Day. The Piłsudians rejected the concept of “the miracle of the Vistula” of 1920 in order to expose Piłsudski's military genius. A well-thought-out creation of the personality cult was certainly expressed in “The Primer” readings for the first classes and a massive campaign for sending name cards to Madeira, where Piłsudski had stayed for health reasons in 1931. The Act on the protection of Józef Piłsudski's name was also adopted²⁰, punishing behaviors “insulting the name of Józef Piłsudski,” with a penalty of up to 5 years imprisonment. The mythologization of the figure of the Marshal grew stronger after his death²¹.

The crowning of the period based primarily on Piłsudski's personal charisma was to be taking the presidential office under the new April Constitution²². It formally placed the President as a superior body over “the government, Parliament, the Senate, the armed forces, the courts and the State

¹⁹ This is what was explicitly stated in the Communication of the Commissariat of the Government on the capital city of Warsaw on 13 December 1929: “May coup d'état as a specific but universally recognized phenomenon of Polish constitutional law cannot be subsumed under any existing article of the Constitution, but as a factual state it constitutes a separate source of unlimited rights of Marshal Piłsudski.” *Komunikaty Informacyjne Komisariatu Rządu na m. st. Warszawę*, t. 4, z. 3 (2 grudnia 1929–30 grudnia 1929), Warsaw 1997, p. 658.

²⁰ Act of August 7, 1938 on protection of the name of Józef Piłsudski, the First Marshal of Poland (Dz.U.R.P. No. 25, item 219).

²¹ Generally cf. H. Hein-Kircher, *Kult Piłsudskiego i jego znaczenie dla państwa polskiego 1926–1939*, Warsaw 2008 (also originally eadem, *Piłsudski-Kult und seine Bedeutung für den polnischen Staat 1926–1939*, Marburg 2002); P. Kusiak, *Legenda i kult Józefa Piłsudskiego. Jak w Polsce doby integracji europejskiej interpretować postać Marszałka?*, “Colloquium Wydziału Nauk Humanistycznych i Społecznych AMW” 2010, t. II, pp. 240–258.

²² Constitutional Act of 23 April 1935 (Dz.U.R.P. No. 30, item 227).

control” (Art. 3). It was, however, the last act signed by already terminally ill Marshal as the Minister of Military Affairs.

IV.

The current PiS leader Jarosław Kaczyński in all his political career has not performed any exposed functions or held state offices, besides the position of the Prime Minister at the turn of 2006/2007. However, his role as the president of the political group that he has been playing since 2003 is huge and grows beyond party structures. This allows to influence the filling posts of the highest state offices and decisions made by them, at the same time avoiding legal responsibility. A striking example are the personnel decisions on the Prime Minister’s office regarding Beata Szydło and Mateusz Morawiecki. Moreover, Ms. Szydło herself stated that both with Morawiecki they were “anointers” of Jarosław Kaczyński²³. These decisions were made at the seat of the party, not in the offices of the constitutionally authorized bodies to form the government. A characteristic proof of the role of Jarosław Kaczyński may be also B. Szydło’s resignation, firstly handed in before the PiS Political Committee, and only after before the President of Poland. The leader probably preserved a similar influence on the staffing of individual ministries and other links of the central apparatus. The PiS leader’s reluctance to remain within the procedural legal framework is very clear and manifests itself even in taking the floor during the Sejm’s debates ‘without any mode’ or the presence in a place disturbing the formal precedence during state ceremonies.

The adopted *modus operandi* protects the leader from political and constitutional responsibility. Jarosław Kaczyński does not hold office in the government, thanks to which the Sejm cannot call him to account, e.g. by means of a constructive vote of no confidence. This responsibility may, however, brought to functionaries, such as the Prime Minister. This is for instance evidenced by the procedure initiated against B. Szydło²⁴. We are dealing with

²³ <https://natemat.pl/191123,mocne-wyznanie-premier-beaty-szydlo-oboje-z-mateuszem-jestesmy-pomazancami-jaroslaw-a-kaczynskiego> (11.11.2018).

²⁴ <http://sejm.gov.pl/Sejm8.nsf/agent.xsp?symbol=glosowania&NrKadencji=8&NrPosiedzenia=53&NrGlosowania=23> (11.11.2018). Although the vote on 7 December 2017 did

a specific transfer of accountability from the decision-maker to the person who is formally responsible. This situation evidently extrapolates to constitutional liability proceeded before the State Tribunal and without any doubt it calls to mind the procedure of responsibility of Minister Czechowicz acting on Piłsudski's request.

The will to ensure an ability to impact the key decisions of the Public Prosecutor's Office could be one of the grounds for amending Art. 12 of the Act on the Public Prosecutor's Office²⁵, which now allows the Prosecutor General to make the information available to "other persons" (who do not hold offices in public authorities). This provision has been criticized by the Commissioner for Human Rights (Rzecznik Praw Obywatelskich)²⁶ as well as the National Council of the Judiciary (KRS)²⁷, who put a request for carrying out constitutional review with regards to the provision.

The impact of Jarosław Kaczyński on structures of the authorities and the state decisions is enormous. It is based primarily on the personal authority and the unchallenged position in the leader-shaped party. The question about the reason for this situation can be rightly asked. It seems that one of the factors is a peculiar transfer of authority that Lech Kaczyński had at his disposal. After his death in the Smolensk plane crash, Jarosław Kaczyński replaced his twin brother²⁸, who would be an obvious PiS candidate for the second term of office. This moment can be also seen as constitutive for the legend of Lech Kaczyński, deliberately combined with the legend of Piłsudski²⁹.

not lead to the expected change of government, on the very same day, Beata Szydło submitted the resignation described in the text. On 8 December 2017, the official resignation was handed over to the Head of State and then accepted.

²⁵ Act 28 January 2016 – Law on the Prosecutor's Office (Dz.U. item 177).

²⁶ <https://www.rpo.gov.pl/sites/default/files/Wniosek%20TK%20w%20sprawie%20ustawy%20o%20prokuraturze.pdf> (11.11.2018).

²⁷ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=2ahUKEwiK39Pjk8reAhVC26QKHxNUDf8QFjAEegQIB-BAC&url=http%3A%2F%2Fwww.krs.pl%2Fadmin%2Ffiles%2Ftk%2Fuchwala%2520krs%25203652016%2520z%252013.05..doc&usq=AOvVaw2UMUq7374X2bJa0HSTp6pJ> (11.11.2018).

²⁸ At the same time, the physical resemblance is not irrelevant here.

²⁹ A significant fact is that the bodies of the presidential couple were put on Wawel in the crypt under the Tower of Silver Bells, in the vestibule of the Piłsudski's Crypt, and that Lech Kaczyński's monument was located in Piłsudski's Square in Warsaw. Furthermore, Lech Kaczyński was named by his brother as one of the continuators of "Piłsudski's independence

The authority in the almost mystical layer was strengthened by the so-called Smolensk monthiversaries, which since the 2015 elections won by the PiS, obtained not only religious, but also quasi-state status with military assistance. Thus, in the face of such circumstances, holding official functions is not necessary to influence state matters.

V.

In concluding remarks, we observe that labelling the current PiS leader as the Chief of State is definitely inadequate. It follows from the fact that his contemporary influence on the functioning of the state is not supported by either personal services or performing state functions. It is based on mythical categories, built on emotions and instruments of historical politics, rather than on real systemic circumstances. We can only see some similarity, ironically, in a disrespectful approach towards parliamentary procedures, the Parliament itself and political opposition, which probably states for the Chiefs of States expression of the belief about “growing” outside the institutionalized political and legal system.

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thought” <https://www.google.com/search?q=Lech+Kaczy%C5%84ski+my%C5%9Bl+niepodleg%C5%82o%C5%9Bciowa&ie=utf-8&oe=utf-8&client=firefox-b> (11.11.2018); whereas during the unveiling of the monument of President Lech Kaczyński, President Andrzej Duda stated the following: “From the time of Marshal Józef Piłsudski there was no such a great leader of the Polish state” <http://wiadomosci.gazeta.pl/wiadomosci/7,114883,24153335,pomnik-lecha-kaczynskiego-odsloniety-duda-od-pilsudskiego.html> (11.11.2018). On the same day, Jarosław Kaczyński spoke about Lech’s direct causal role for a “good change.”

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