

Ilona Grądzka¹

Evolution of the Presidency in Poland since 1989

Keywords: president, the executive power, constitution, political institutions.

Słowa kluczowe: prezydent, organy władzy wykonawczej, konstytucja, organy władzy.

Abstract

The article examines the evolution of the presidency in Poland since its re-establishment in 1989 until the present Constitution of the Republic of Poland. It analyses the regulations relating to the legal competences of the president. Many of the president's originally broad competences have been changed or limited. The institution of the president has been included in the executive branch; however, due to the varied nature of president's competences, it cannot be treated as an organ of the public administration.

Streszczenie

Ewolucja pozycji ustrojowej prezydenta w Polsce od 1989 roku

Przedmiotem artykułu jest ewolucja instytucji prezydenta od jej reaktywacji w 1989 r. do obecnie obowiązującej Konstytucji RP. Analizie poddane zostały regulacje dotyczące kształtu prawnego tej instytucji. Początkowo duży zakres kompetencji prezydenta uległ pewnym przekształceniom i ograniczeniom. Urząd prezydenta został zaliczony do organów władzy wykonawczej. Jednak jego różnorodny charakter kompetencji nie pozwala zaliczyć go do organów administracji publicznej.

¹ ORCID ID: 0000-0003-0127-4970, PhD, The Department of Constitutional Law of the Faculty of Law, Canon Law and Administration of the John Paul II Catholic University of Lublin, E-mail: ilonag@kul.pl.



I. Introduction

The institution of the presidency is not deeply ingrained in the Polish tradition, which is connected with Poland's history. The times when Poland was under partition did not encourage the development of any political institutions. After World War II, the Constitution of the Polish People's Republic of 1952² abolished the institution of the one-man head of state, replacing it with the so-called collegial head of state body. The article aims at presenting the position of the President of the Republic of Poland as it evolved starting from 1989 till the Constitution of 2 April 1997³, which is in force now.

II. Political and constitutional reforms between 1989 and 1997

The late 1980s was the turning point in the history of Poland due to the Round Table Talks between the government and the opposition, which gave rise to political reforms. The Round Table Talks had been convened as it was necessary to reform the political and constitutional system in Poland.

As part of political transformations, the institution of the president was re-introduced, replacing the Council of State, which had served as the so-called collegial head of state⁴. The decision to re-establish the institution of the president and determine its legal position was a direct outcome of the political talks held between the Communist government and the opposition. These had been preceded by informal and confidential work group meetings in Magdalenka, in which key figures representing both sides took part, with Lech Wałęsa and Czesław Kiszczak as their leaders⁵.

The State reform as seen by the ruling Communist party was to be based on co-opting the so-called constructive opposition members to the government

² Dz.U. No. 33, item 232.

³ Dz.U. No. 78, item 483.

⁴ W. Skrzydło, *Rada Państwa*, "Państwo i Prawo" 1983, No. 3, p. 13.

⁵ J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warsaw 1999, p. 16.

and making them partially responsible for the hardships of getting out of the economic and socio-political crisis⁶. By allowing members of the opposition to participate in “non-confrontational” elections to the Sejm, the Communist party attempted to legitimize the existing system. Establishing the institution of the president was crucial for the Communist authorities, as he was to secure the continuity of the socialist system in Poland⁷.

On the other hand, the opposition sought to legalize the Solidarity union, bring some of their members into the government, and introduce mechanisms of democratization on a broad scale. However, they did not want to agree to participate in semi-democratic elections and to establish the presidency that would be vested with quite strong competences. The concept of the president put forward by Czesław Kiszczak in Magdalenka, was commented on by Lech Wałęsa in the following way: “[...] but we must have a more democratic president. The president that we heard about from Mr General, would probably have a lifetime position. He would leave the office only when shot dead. It works like that: boys, you have got more than you wanted, but you have to pay four times more. We cannot agree to something like that. We do not want to be driven into a corner that is worse than Stalinism”⁸.

This shows that the parties to the Round Table Talks had completely different visions of the reforms, which could have led to breaking off the negotiations. Ultimately, the breakthrough came with the proposal put forward by the ruling coalition, which promised to agree to hold free elections to the Senate in exchange for the opposition’s consent to the institution of the president. This solution was beneficial for both the ruling party, which got the opposition’s consent to establish the institution of the president, and for the opposition, which was permitted to form the second chamber of the Parliament (the Senate) elected in fully democratic elections. The Senate was meant to be “a sufficient compensation” for the opposition agreeing to re-introduce the institution of the president.

Reaching a consensus on the legal status of the president and amending the Constitution of the Polish People’s Republic accordingly, required long negotiations and compromises on both sides. In the literature, the propos-

⁶ R. Mojak, *Institucja Prezydenta RP w okresie przekształceń ustrojowych*, Lublin 1995, p. 69.

⁷ K. Dubiński, *Magdalenka transakcja epoki*, Warsaw 1990, p. 38.

⁸ *Ibidem*, p. 60.

als made by the Communist authorities are described as the ones that would lead to establishing a dictator and would be an attack on the republican system of government. The Communist authorities responded to those objections with the following statement: “we cannot have the president that would be like the British Queen”⁹.

Decisions regarding the presidential powers were part of a ‘contract’ because the Communist party had already chosen a candidate for this office. He was to guarantee further slow changes in the political system. In turn, the Senate was vested with more powers, which was the concession made by the ruling party in favour of the opposition.

Following the Round Table Talks, the Constitution of the Polish People’s Republic of 1952 was amended on 7 April 1989¹⁰. One of the main changes that were introduced concerned the presidential office. This change, however, consisted in re-establishing the office itself rather than in determining the constitutional model of the presidency in a comprehensive way¹¹.

The model of the presidency set out in the draft version of April amendment was new and significantly different from the one found in previous Polish constitutional acts or from international solutions¹². Moreover, the changes that were being introduced tended towards Montesquieu’s concept of the division of powers, which constitutes the basis of every democratic state’s structures. However, lack of a clear conception of the main state bodies, including that of the president resulted in difficulties in defining their competences. It should be added that although the president was vested with strong powers, the real extent of those powers was not clearly determined by the legislator.

The way presidents exercised their powers between 1989 and 1992 shows far-reaching dependencies between the person holding the office and the institution itself. This is particularly evident with regard to the presidency of Wojciech Jaruzelski, and then that of Lech Wałęsa. It is pointed out that Jaruzelski adopted the role of a passive observer of the changes that were taking

⁹ Cf. R. Mojak, *op.cit.*, p. 77.

¹⁰ Dz.U. No. 19, item 101.

¹¹ P. Sarnecki, *Prezydent jako organ czuwający nad przestrzeganiem Konstytucji*, “Państwo i Prawo” 1990, No. 11, p. 14.

¹² R. Mojak, *Stanowisko ustrojowe Prezydenta RP w świetle Małej Konstytucji z 17 X 1992 r.*, “Biul. Lubelskiego T.N. Humanistyka” 1991/1992, No. 1/2, p. 47.

place in Poland, and he made limited use of the position of a “strong” president, in order to preserve the socialist system¹³. Lech Wałęsa, on the other hand, was elected in general and direct elections¹⁴, which gave him strong social legitimacy. He was actively involved in the internal and foreign policy of the state, leaning towards the presidential model.

The Constitutional Act on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government, which was passed on 17 October 1992 and is referred to as the Small Constitution¹⁵, was a step forward in the process of getting out of the constitutional chaos. The Small Constitution adopted legal regulations introduced after 1989, but it made a more conscious attempt to determine clearly the place of the president in the system of state organs. The president’s position was subordinated to main constitutional principles and the fact that the president was one of the organs of the executive branch indicated future relations between the legislative, executive and judiciary powers.

The solutions adopted in the 1997 Constitution of the Republic of Poland, which is in force now, can be traced back to the regulations of the Small Constitution of 1992. The position of the president is determined by the constitutional principle of division of powers (Art. 10, sec. 2), according to which he is one of the organs of the executive branch. This principle defines his place in the structure of state organs and sets out the nature of relations between those organs. The general framework of the president’s position is set out in Art. 126 of the Constitution of the Republic of Poland. This article, however, does not list the competences of the president, but only serves as the basis for determining his functions in general¹⁶. It grants the president the status of the supreme representative of the Republic of Poland and the guarantor of the continuity of state authority. He is to ensure observance of the Constitution, safeguard the sovereignty and security of the State, as well as the inviolability and integrity of its territory. The Constitution also grants the pres-

¹³ B. Szczurowski, *Prezydent Rzeczypospolitej Polskiej jako organ czuwający nad przestrzeganiem konstytucji*, Warsaw 2016, p. 192.

¹⁴ The Act of September 27, 1990 on the election of the President of the Republic of Poland (Dz.U. No. 67, item 398 as amended).

¹⁵ Dz.U. No. 48, item 426 as amended.

¹⁶ *Prawo konstytucyjne*, ed. Z. Witkowski, Toruń 2013, p. 354.

ident the role of a political arbitrator. He is perceived as an authority that is to act in case of some political conflicts, he is to stabilize the constitutional order and safeguard the basic values that are necessary for the functioning of the nation and the state¹⁷. Furthermore, an important feature characterising the constitutional position of the president is the principle of incompatibility (*incompatibilitas*) of the presidential office, and the non-legal requirement that the president should be politically neutral¹⁸. It is noteworthy that the Constitution repeats the regulation adopted in 1990 which says that the president is elected in universal and direct elections, which is an important attribute of his authority¹⁹.

The position of the president as set out in the Constitution of 1997 has evolved over time, this being a result of different ways that presidents exercised their powers depending on their personal qualities and charisma. Therefore, the same functions or competences have been carried out in a slightly different way during successive terms.

III. Conclusion

The Constitution of the Republic of Poland has consolidated a system of government based on the division of powers, setting out the relations between them and ensuring the balance of powers. The president is part of the dualistic executive branch, but he has been deprived of the power to exert a significant influence on the government and its policy. The present concept of the presidency has been an outcome of compromises between the main political forces as they were working on the Constitution of the Republic of Poland.

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¹⁸ Cf. D. Dudek, *Autorytet Prezydenta a Konstytucja Rzeczypospolitej Polskiej*, Lublin 2013, p. 20.

¹⁹ *Ibidem*, p. 38.

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