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The System of Government under the Small Constitution of 1919

Keywords: system of government, the Small Constitution of 1919, parliament, head of state, government

Słowa kluczowe: system rządów, Mała Konstytucja z 1919 r., parlament, głowa państwa, rząd

Abstract

The subject of the article is to identify factors and conditions that determined the system of government of the IInd Republic of Poland under the Small Constitution of 1919. This act served as a temporary constitution until the March Constitution of 1921 came into force, which happened completely only at the end of 1922. Under the Small Constitution there has been made an attempt to introduce the system of supremacy of the parliament. It turned out to be impossible because of high authority of the head of state – Józef Piłsudski, who also served as the Commander-in-Chief. Therefore, the system of balance between the Legislative Sejm and the Chief of State was shaped in the political practice.

Streszczenie

System rządów w okresie obowiązywania Małej Konstytucji

Przedmiotem opracowania są okoliczności i uwarunkowania, które określiły system rządów II Rzeczypospolitej w okresie obowiązywania Małej Konstytucji z 1919 r. Akt ten

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pełnił funkcję tymczasowej konstytucji do czasu wejścia w życie Konstytucji Marcowej z 1921 r., co nastąpiło w pełni dopiero pod koniec 1922 r. Na mocy Małej Konstytucji dokonana się próba wprowadzenia systemu rządów zgromadzenia. Okazało się to niemożliwe ze względu na wysoki autorytet głowy państwa – Józefa Piłsudskiego, który pełnił również funkcję naczelnego wodza. Dlatego też w praktyce ustrojowej ukształtowała się zasada równowagi między Sejmem Ustawodawczym a Naczelnikiem Państwa.

I.

The following article addresses the problem of the system of government of the IInd Republic of Poland under the Small Constitution of 20th February 1919. The Small Constitution was an act laying the foundations for the system of government of the Republic of Poland on the brink of independence. The act was valid until the March Constitution of 17th March 1921² came into effect. The Constitution was published in the Journal of Laws of 1st June 1921 and came into force. However, the provisions of the Small Constitution stipulating the Parliament and the Head of State, co-existed concurrently with the March Constitution until 11th December 1922, pending the election of the President by the National Assembly and his entrance into office. In this way the Small Constitution was valid for four years. It was a very difficult time for the reborn Polish State. The time when fights over fixing national borders (the war with the Bolshevik Russia) and creating foundations for the Republic of Poland took place.

II.

Since 1795 until the end of the First World War the Polish State was under the partitions of neighbouring empires (Russia, Prussia and Austria). The regaining of independence in the first days of November 1918 was possible be-

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² The Law of 17th March 1921 – the Constitution of the Republic of Poland (Dz.U. No. 44, item 267).

cause of the conflict between the countries mentioned above and fights of the next generations of Poles against them³.

Over the period 1914–1918 Józef Piłsudski, who was held in German captivity for a long time, became a national hero. In November 1918 Piłsudski came back to Warsaw and was accepted as the Provisional Chief of State⁴. The Polish government was formed. In January 1919 free parliamentary elections to the Legislative Sejm were held, based on democratic election ordinance. No party won the vast majority of the seats, however, the most important political faction became National Democracy (ND)⁵. It consisted of political opponents of Józef Piłsudski. In this context, we need to look at further political changes, which led to weakening of the role of the Head of State. That was the reason why Józef Piłsudski expressed his dissatisfaction with the Small Constitution's solutions⁶.

The gathering of the Legislative Sejm meant that the responsibility for the fate of the Polish people was placed on the representative body. The Legislative Sejm worked as the chamber competent to enact the constitution. It was its basic task. However, foundations for the system of government of the Republic of Poland should have been established beforehand. After the first ses-

³ See: T. Maciejewski, *The History of Polish Legal System from the 10th to the 20th Century*, Warsaw 2016, p. 202; K. Prokop, *Polish Constitutional Law*, Białystok 2011, pp. 19–21; Cf. D.H. Cole, *Poland's 1997 Constitution in Its Historical Context*, "Saint Louis-Warsaw Transatlantic Law Journal" 1998, p. 21.

⁴ Cf. D. Górecki, *Powstawanie władz naczelnych w odradzającej się Polsce (1914–1919)*, Łódź 1983, pp. 147–148; S. Estreicher, *Przewodnia myśl konstytucji polskiej w porównaniu do konstytucji obcych*, [In:] *Nasza Konstytucja*, Cracow 1922, p. 210; W.J. Wołpiuk, *Naczelnik Państwa 1918–1922. Przedprezydencka forma władzy państwowej*, "Przegląd Sejmowy" 2005, No. 6, pp. 24–25; T. Ciświcki, *O Naczelniku Państwa i Prezydencie Rzeczypospolitej Polskiej. Studium prawnopolityczne*, Poznań 1922, pp. 48–49; A. Tokarski, *Koncepcje głowy państwa w projektach Konstytucji RP z lat 1918–1921*, "Przegląd Prawa Konstytucyjnego" 2017, No. 4, pp. 21–22; K. Prokop, *Institution of the President in the Visegrad Group States*, [In:] *Evolution of Constitutionalism in the Selected States of Central and Eastern Europe*, eds. J. Matwiejuk, K. Prokop, Białystok 2010, p. 78.

⁵ S. Krukowski, *Sejm Ustawodawczy 1919–1922*, "Czasopismo Prawno-Historyczne" 1986, No. 1, p. 97; D. Malec, *Sejm Ustawodawczy 1919–1922. W 90. rocznicę pierwszego posiedzenia*, "Przegląd Sejmowy" 2009, No. 1, pp. 17–18.

⁶ See: W.T. Kulesza, *Uchwała Sejmu Ustawodawczego z dnia 20 lutego 1919 r. o powierzeniu Józefowi Piłsudskiemu dalszego sprawowania urzędu Naczelnika Państwa*, "Przegląd Sejmowy" 2007, No. 5, p. 40; Cf. S. Rogowski, *Małe konstytucje (1919–1947–1992)*, "Przegląd Sejmowy" 1999, No. 2, pp. 16–17.

sion, the Legislative Sejm started to prepare a draft of the provisional constitution. The Legislative Sejm's resolution of 20th February 1919 entrusted Józef Piłsudski with the further execution of the office of the Chief of State⁷. The provisional constitution was called the Small Constitution.

III.

The Legislative Sejm was the only representation of the nation⁸. This was the reason why the authors of the Small Constitution described it as sovereign power. The Legislative Sejm had a superior position which was typical for the system of supremacy of the parliament. The rule of tripartition of powers was rejected. Sessions of the Sejm were called without cooperation with the government. The Head of State and the Government were subordinated to the Legislative Sejm. The Chief of State was acknowledged as "the highest executor" of resolutions adopted by the Sejm. Thereby, the authors of the Small Constitution tried to restrict the Head of State's freedom of action. It was not easy because of lack of clarity of his role⁹.

The Chief of State and the Government were responsible before the Sejm for exercising public functions¹⁰. For that reason, there was no neutralisation of the Head of State, which is one of essential mechanisms of parliamentary system of government. The Small Constitution required a countersignature of acts of the Chief of State by ministers¹¹. As a result the Prime Minister lost his monopoly on countersigning acts of the Head of State. Consequently, his position weakened¹².

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⁷ Dz.U. 1919, No. 19, item 226.

⁸ A. Kulig, *Kształtowanie formy rządów u progu niepodległej Polski (1917–1926)*, Warsaw 2013, p. 10.

⁹ Z. Witkowski, *Prezydent Rzeczypospolitej Polskiej 1921–1935*, Warsaw 1987, pp. 19–20.

¹⁰ W. Komarnicki, *Polskie prawo polityczne (Geneza i system)*, Warsaw 1922, p. 67; P. Kierończyk, *Nadrzędność parlamentu – mit czy realna alternatywa ustrojowa? Analiza wybranych przykładów*, Gdańsk 2009, p. 174.

¹¹ Countersignature was used on the turn of 1918 and 1919, when Józef Piłsudski held the office of the Provisional Chief of State. Countersignature was given by the Prime Minister.

¹² A. Kulig, op.cit., p. 171; see also: A. Deryng, *Akty rządowe głowy państwa*, Lwów 1934, p. 59.

The Legislative Sejm held a monopoly on the legislative process. The Small Constitution didn't accept the possibility for the notification of the draft of law by the Chief of State or the Government. It stipulated that laws with counter-signature of the Prime Minister and the competent minister in charge were announced by the Speaker of the Parliament (Marshal of the Sejm). However, in practice the Government had a legislative initiative. The Chief of the State cooperated with the Government on legislative solutions offered by him. At the same time, he didn't exercise the right of legislative initiative.

IV.

The procedure of establishing a new government was a crucial factor in determining relations between the Head of State and the Legislative Sejm. A characteristic feature of Polish parliamentary democracy at that time was creating casual coalitions between parliamentary groups, which end up in government crisis. According to the provisions of the Small Constitution the composition of the Government was determined on the grounds of agreement between the Chief of State and the Legislative Sejm. In fact, only the nomination of the Prime Minister was discussed¹³. The Council of Seniors¹⁴ approved of the candidate for the chief of Government, who was designated by the Head of State, the Speaker of the Parliament or a parliamentary faction. Then the candidate was given the mission to form a new government. After presenting candidates by the designated Prime Minister, the Chief of State appointed the cabinet¹⁵. The Government had to get a vote of confidence from the Legislative Sejm¹⁶.

The principle of balance between the Chief of State and the Legislative Sejm was formed under the influence of events connected with the fall of the government headed by Antoni Ponikowski in June 1922. The cabinet resigned on Piłsudski's request. It was connected with German-Soviet treaty in Rapallo. Tensions reached their height when the Chief of State didn't accept Wojciech Korfanty, who was designated by the Legislative Sejm as a Prime Min-

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¹³ Cf. D. Górecki, *op.cit.*, p. 194.

¹⁴ The Council of Seniors was an executive collegial body of the Legislative Sejm.

¹⁵ P. Kierończyk, *op.cit.*, p. 176.

¹⁶ A. Kulig, *op.cit.*, p. 175.

ister. On the 26th of July a motion of vote of no-confidence was filed against the Chief of State. As a result the government under the Prime Minister Julian Nowak was formed. The cabinet was accepted by the Head of State and by the parliamentary majority.

As a result of the cabinet crisis of June 1922 the Legislative Sejm at the request of the Chief of the State determined the mode of forming the cabinet. An appropriate resolution was amended as follows: "Words «the Chief of State designates» and the words «on the grounds of agreement with the Sejm» meant that the Chief of State designated candidate for the Prime Minister". If the Chief of State failed to designate the candidate or if the Legislative Sejm or a competent body did not approve him, the Prime Minister was designated by the Sejm. The consequence of this law was an amendment to the Rules and Regulations of Procedures of the Legislative Sejm. The Principal Commission was set up, which took part in the procedure of forming the Council of Ministers¹⁷.

The political events from June and July 1922 laid down the principle of balance between the Legislative Sejm and the Chief of State in the procedure of forming a new government¹⁸. The candidate for the Prime Minister had to gain trust of the parliamentary majority and the Chief of State¹⁹. Changes in the Council of Ministers were made without involvement of the Legislative Sejm. Changes were made by the Chief of State – upon the motion of the Prime Minister. The Parliament was only informed about the change²⁰.

V.

Nominally, powers of the Chief of State under the Small Constitution were limited. They were compensated by execution of the function of the Commander-in-Chief²¹. However, disputes between the Chief of State and the Legislative Sejm occurred. After occupying Vilnius Józef Piłsudski issued proclamation of 22nd April 1919 to "Inhabitants of the Grand Duchy of Lithuania". National De-

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¹⁷ Ibidem, p. 178.

¹⁸ S. Rogowski, *op.cit.*, p. 21.

¹⁹ P. Kierończyk, *op.cit.*, p. 177.

²⁰ A. Kulig, *op.cit.*, p. 179.

²¹ P. Kierończyk, *op.cit.*, p. 175.

mocracy said that his actions were illegal. The supporters of Piłsudski on the other hand, insisted that acts issued by the Chief of State were valid without countersignature²². It was confirmed by so called “Additional Protocol” attached to the Small Constitution. The document took the form of a resolution of the Council of Seniors. According to it, all parliamentary factions agreed that the Small Constitution’s provisions on the countersignature did not include military acts²³. Thereby, without changing the Small Constitution, its significant part was modified. As a result the position of Józef Piłsudski was strengthened²⁴.

VI.

The Small Constitution caused the establishment of a government system with dominant position of the Legislative Sejm. Its power was unlimited. However, this particular government system could not succeed because of the authority of the Chief of State, which enabled him to balance the position of the Legislative Sejm. It should be acknowledged that parliamentary system of government under the Small Constitution was not typical. The Sejm controlled not only the Government but also the Head of State. According to the Small Constitution there was no balance between executive and legislative power²⁵. However Józef Piłsudski had more power than it came from the constitutional provisions. It was possible because of his personal authority and his function as the Commander-in-Chief.

The attempt to settle this kind of government turned out to be structural ephemera. Drafts of the Constitution presented in 1919 almost without exceptions assumed the mechanisms of the parliamentary-cabinet system of government. Finally, the majority of the Sejm decided to form the government similar to the French IIIrd Republic. The Constitution of the Republic of Poland of 17th March 1921 followed the same pattern.

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²² Ibidem, p. 176.

²³ M. Pietrzak, *Rządy parlamentarne w Polsce w latach 1919–1926*, Warsaw 1969, pp. 46–47.

²⁴ Cf. W. Bednaruk, *The History of Polish Constitutional Law*, [In:] *A Synthesis of Polish Law*, eds. T. Guz, J. Głuchowski, M.R. Pałubska, vol. 1, Frankfurt am Main 2009, pp. 180–181.

²⁵ Cf. M. Pietrzak, op.cit., pp. 50–51; P. Kierończyk, op.cit., p. 180; W.T. Kulesza, op.cit., p. 47.

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