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Legal Acts of the President in selected Polish constitutions

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Słowa kluczowe: władza wykonawcza, prezydent, głowa państwa, akty urzędowe, prerogatywy prezydenta.

Abstract

This paper seeks to address the issues related with the official acts of the President in selected contemporary Polish constitutions. For this purpose, a preliminary analysis of the position of the head of state was conducted in respect of the March Constitution, April Constitution and the current Constitution of the Republic of Poland of 1997. The nature of the official acts of the President has been assessed for the system position of the head of state. It also identifies the nature and characteristics of the official acts of the President.

Streszczenie

Akty prawne prezydenta w wybranych polskich konstytucjach

Artykuł ma na celu zasygnalizowanie zagadnień związanych z problematyką aktów urzędowych prezydenta w wybranych polskich konstytucjach. W tym celu dokonano wstępnej analizy pozycji ustrojowej głowy państwa w konstytucji marcowej, konstytucji kwietniowej oraz konstytucji z 1997 roku. Charakter aktów urzędowych prezydenta zos-

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tał oceniony pod kątem pozycji ustrojowej głowy państwa. Wskazano również na charakter oraz cechy aktów urzędowych prezydenta.

I. Introduction

The institution of the head of state is of exceptional importance in Polish constitutional tradition. Given its limitations, this study may merely call attention to the problem indicated therein and stress its most important elements. The issues which are particularly important research-wise are related to the system position of the head of state in specific Polish constitutions, both in respect of its relationship to other authorities and in the light of the rules regarding the president's election, political responsibility, and competences. An analysis of these questions allows for determining the impact of these elements on the nature and scope of the legal acts issued by the head of state. Furthermore, it is necessary to specify whether such acts constitute personal rights of the head of state or rather may be only carried out in the context of interaction with other entities.

Pursuant to the doctrine of the Polish Constitutional Law, it is assumed that the official acts of the President are a form of official duties of the head of state as to the implementation of his constitutional and legislative competences². They comprise any decisions made and actions taken by the president. The constitution of 1997 distinguishes between four types of official acts of the president. These include legislative acts, i.e. decree-laws issued under the authority of the provisions of Art. 234 of the Constitution of 1997; regulations which constitute implementing acts (Art. 92); regulations which constitute domestic sources of law (Art. 93); and regulations which constitute acts of administration (Art. 142 sec. 2). A president's address or ratification of international agreements are also classified as official acts of a specific

² R. Mojak, *Prezydent Rzeczypospolitej Polskiej*, [In:] *Polskie prawo konstytucyjne*, ed. W. Skrzydło, Lublin 2010, p. 312 et seq.; A. Deryng, *Akty rządowe głowy państwa. Rozważania ustrojowe*, Warsaw 2017, p. 16 et seq.

character. The doctrine of constitutional law highlights that any official duties performed by the President ought to be regarded as his official acts. It is therefore possible to categorise them as to the form of the official act and its institutional character³.

II. March Constitution

The March Constitution introduced a parliamentary system of government to the Republic of Poland⁴. The authority was vested in the parliament, with a particularly significant role of the Sejm. The executive authorities were dependent on the legislature. Both the President and the ministers were responsible to the Parliament. Their political existence was expressly subject to the will of the legislative authority, which was also in charge of electing the executive authorities.

In accordance with the provision of Art. 2 of the Law of 17 March 1921 – the Constitution of the Republic of Poland⁵ (hereinafter referred to as the March Constitution), the supervising authority in the Republic of Poland is vested in the Nation, represented by the Sejm and the Senate in respect of the legislation, and by the President of the Republic of Poland along with respective ministers as to the executive power. The President was elected by the National Assembly consisting of the Sejm and the Senate for a term of 7 years⁶. The regulations referred to above clearly indicate that the head of state did not play a prominent role in the system. Despite a relatively long term, the President was elected by the National Assembly, which means that the President did not have a strong mandate issued directly by the nation.

What further confirms the above is the fact that the President could be removed from office by a resolution of the Sejm passed by a 3/5 majority vote,

³ B. Banaszak, *Constitutional Law*, Warsaw 2015, p. 493 et seq.

⁴ J. Szymanek, *System rządów parlamentarnych (ewolucja polityczno-prawnych mechanizmów współpracy i równoważenia legislatury i egzekutywy)*, [In:] *Systemy rządów. Dylematy konstytucyjnej regulacji i praktycznej funkcjonalności*, eds. T. Mołdawa, J. Szymanek, Warsaw 2007, pp. 123–128.

⁵ Dz.U. No. 44, item 267.

⁶ Art. 39 of the March Constitution.

provided that he had not exercised his authority for three months⁷. The President had no autonomous position in the area of governance due to Art. 43 of the March Constitution, whereby he exercised the executive power through ministers responsible to the Sejm and their subordinates. In other words, the President exercised his powers only by means of other entities, himself being devoid of any independent powers. The President co-signed acts together with relevant ministers. Under the statutory authority and for the purpose of implementing the acts, the President had the right to issue executive orders, policies, instructions, and prohibitions. Every government act of the president, however, required the signature of the prime minister and the relevant minister for its validity. By signing the act, it was them that held the responsibility for it⁸. The President was therefore exempted from liability for any of his official acts on the one hand, but on the other hand he could only issue them in cooperation with the Prime Minister and the relevant minister. In practice, this limited the authority of the head of state to a very significant extent. It is crucial to note that the Prime Minister also validated nominations for presidential officials by means of a counter-signature. It was the PM that was responsible for their actions to the Sejm⁹. This regulation is yet another proof of restricted autonomy of the President and his inferior position established by the March Constitution, as confirmed in further regulations. In accordance with the provisions of Art. 51 of the March Constitution, the President was responsible for his official duties neither to the Parliament, nor in respect of civil liability.

The considerations presented above indicate that the President did not play a major role in the system under the March Constitution. Firstly, being elected by the National Assembly and not directly by the Nation, he did not hold a real popular mandate. All actions of the head of state were subject to the will of the Parliament or consultation with other executive authorities. As a consequence, the President was deprived of the right to act on his own independent judgment (prerogatives). Thus all the official acts of the President required another executive body or bodies to counter-sign them and to take over the responsibility for such acts as a result.

⁷ Art. 42 of the March Constitution.

⁸ Art. 44 of the March Constitution.

⁹ Art. 45 sentence 3 of the March Constitution.

III. April Constitution

The provisions of the Constitutional Act of 23 April 1935¹⁰ (hereafter “April Constitution”) established a presidential system¹¹. The power was vested in the President of the Republic of Poland, with other authorities and their organs being dependent on the head of state. Some features of the regime which operated on the basis of the April Constitution reveal that it was, to a certain extent, an authoritarian one.

Pursuant to the provisions of Art. 2 sec. 1 of the April Constitution, the President of the Republic of Poland was the head of state, answerable only to God and history, which in fact implied no political responsibility whatsoever. His role embodied a uniform and indivisible state authority¹². It can therefore be concluded that the April Constitution was oblivious of the concept of separation of powers. Moreover, organs of state were subordinate to the authority of the President of the Republic of Poland¹³. Pursuant to the provisions of Art. 11 of the April Constitution, the President had, in addition, the supreme power in the State, furthermore coordinating the operation of public bodies. The April Constitution also conferred considerable powers upon the head of state. In accordance with Art. 12 of the Constitution, the President of the Republic of Poland was entitled to the following: to appoint the Prime Minister at his own discretion, as well as the ministers at the request of the PM; to convene and dissolve the Sejm and the Senate; to decide on the opening, postponement and closing of the sessions of the Sejm and the Senate; to represent the Polish State *in foreign* policy matters, to receive representatives of foreign countries and to delegate representatives of Poland to foreign countries; to decide upon war and peace; to enter and ratify international agreements; as well as to appoint subordinate officials of the head of state. He was also the Commander-in-Chief of the Armed Forces of the Republic of Poland. Pursuant to the provisions of Art. 14 sec. 1 of the April Constitution, any government act of the President required the signature of the prime minister and

¹⁰ Dz.U. No. 30, item 227.

¹¹ R. Balicki, *Głowa państwa w rozwiązaniach konstytucyjnych różnych systemów rządów*, [In:] *Systemy rządów...*, pp. 12–17.

¹² Art. 2 (4) of the April Constitution.

¹³ Art. 3 (1) of the April Constitution.

the relevant minister for its validity. The obligation to obtain a counter-signature, however, was of a merely formal nature in that it was the head of state that appointed the prime minister and the remaining ministers at his request. The powers of the President of the Republic of Poland listed above were in fact his personal rights in their nature, only requiring a counter-signature for the sake of formality. Yet it was the Prime Minister and the minister signing an official act of the President who bore responsibility for it.

Under the provisions of Art. 13 of the April Constitution, the President of the Republic of Poland held a number of rights of a *purely* personal nature, which were identified as prerogatives. These included the right to designate one of the candidates for the President and to call a general election; to determine his successor in the event of war; to appoint and dismiss the Prime Minister, the First President of the Supreme Court, and the President of the Supreme Audit Office; to appoint and dismiss the Commander-in-Chief and the General Inspector of the Armed Forces; to appoint the judges of the State Tribunal; to appoint senators mandated by the President; to appoint and dismiss the Head of and the officials of the Civil Chancellery; to convene and dissolve the Sejm and the Senate before the end of their term; to institute legal proceedings against members of government at the Tribunal of State; to exercise the prerogative of mercy. In accordance with the provisions of Art. 14 sec. 2 of the April Constitution, official acts of the President issued under the authority of his personal rights (prerogatives) did not require to be counter-signed, therefore they were of a strictly personal nature. What is more, the President of the Republic of Poland was not held responsible for the official acts he issued¹⁴. This concerned both his prerogatives and the official acts requiring a counter-signature.

IV. Constitution of 1997

Upon the enactment of the current Constitution of the Republic of Poland of 2 April 1997¹⁵ (hereinafter “Constitution of 1997”), a parliamentary Cabi-

¹⁴ Art. 15(1) of the April Constitution.

¹⁵ Dz.U. No. 78, item 483 as amended.

net system was established¹⁶. A variation of a parliamentary system, it entails solutions adopted by chancellor and presidential systems, with the positions of both the Prime Minister and the President of the Republic of Poland strengthened in relation to the classical parliamentary system. Pursuant to the provisions of Art. 144 sec. 1 of the Constitution of 1997, the President is to issue official acts by exercising his constitutional and legislative competence. That is to say, the source of official acts of the President may either be the constitution or decree-laws containing provisions which define the powers of the President. For their validity, official acts of the President require the signature of the Prime Minister, who is consequently to be held liable to the Sejm upon signing the act. Similarly as in the case of the April Constitution, official acts of the President under the Constitution of 1997 have been divided into prerogatives and acts requiring the counter-signature of the Prime Minister¹⁷.

It is worth noting that the Constitution of 1997 provides for a relatively large number of presidential prerogatives, pursuant to the provisions of Art. 144 sec. 3 of the Constitution of 1997. The presidential prerogatives presented above contain numerous rights of critical importance for the position of the head of state in the system. These do not, naturally, grant the President as much power as in the case of the April Constitution, yet are similar in their nature to the capacity of the head of state in a presidential system. Given the fact that the President of the Republic is elected by the Nation and performs relevant functions and tasks pursuant to the provisions of Art. 127 sec. 1 of the Constitution of 1997¹⁸ (Art. 126 sec. 1 and 2 of the Constitution of 1997), it must be stated that the position of the President established by the Constitution of 1997 exhibits features which are typical of the presidential system as established in the April Constitution.

¹⁶ G. Pastuszko, *Zasady ustrojowe determinujące strukturę oraz funkcjonowanie organów państwowych w systemie konstytucyjnym RP*, [In:] *Organy państwowe w ustroju konstytucyjnym RP*, ed. H. Zięba-Załucka, Rzeszów 2016, pp. 30–33.

¹⁷ A. Olechno, *Prezydent Rzeczypospolitej Polskiej*, [In:] *Prawo konstytucyjne*, ed. S. Bożyk, Białystok 2014, pp. 271–273.

¹⁸ R. Mojak, A. Trubalski, *Pozycja ustrojowa oraz funkcje i zadania ustrojowe Prezydenta Rzeczypospolitej w świetle Konstytucji RP z dnia 2 kwietnia 1997 r.*, [In:] *Ustrój państwa, myśl polityczno-prawna, współczesne systemy rządów. Prace ofiarowane profesorowi zw. nauk prawnych Adamowi Jamrozowi z okazji Jego Jubileuszu*, eds. S. Bożyk, A. Olechno, Białystok 2018, pp. 200–201.

V. Summary

Due to its limitations, the present paper merely outlines the research problem, which is in need of further examination. However, an important implication of this work is that the nature of the official acts issued by the President is primarily contingent upon the position of the President in the system, which in turn has its source in the regime as stipulated by the provisions of the Constitution. These premises need to be considered in an attempt to conduct a detailed analysis of the legal acts of the President in Polish constitutions. An important matter to be taken into account for future studies is the institution of counter-signature, pertinent to several powers of the head of state. Official acts which do not require to be countersigned constitute presidential prerogatives, i.e. his personal rights. The division between the official acts of the President into those requiring a counter-signature and those which do not require it indicates the actual position and competence of the head of state. In conclusion, the nature of the official acts issued by the President is closely linked with his position in the system, which is directly connected with the regime established in the Constitution.

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