The restoration of Poland’s sovereignty in 1918 was one of this special moments in the long history of the Polish statehood. 123 years after the third partition of Poland among Russian, Austro-Hungarian and Prussian Empires, Poland was back on the political map of Europe. The American President Woodrow Wilson’s call for “national self-determination” for the peoples of Europe began to bring tangible results.

The joy of regaining independence was nevertheless soon accompanied by the challenges that new political elites in Poland had to face. And these challenges – for many reasons – turned out to be enormous. From a legal and constitutional point of view there was a necessity to build, practically from scratch, a political system of this new nation-state. A political system that was
supposed to be based on republican values and principles, which at the time were very much gaining in importance in the global dimension. There were no serious calls for the restoration of monarchy in Poland. Instead Poland was supposed to become a modern republic with a central position of an elected head of state, whose exact role was yet to be determined.

Indeed the first constitution of an independent Polish state, constitution that was based on the principle of the separation of power, established the office of the President of the Republic of Poland as one of the crucial state organs within the executive branch of the Polish system of government. And although the last century has been filled with many dramatic events and Poland’s independence was once again very significantly limited, the constitutional transformation that began in 1989 resulted in, inter alia, the restoration of the office of the President of the Republic of Poland. This office, in the eyes of many Poles, is one of the key elements of the Polish political system, the source of Polish statehood, sovereignty and political identity.

The main purpose of this article is to review the Polish constitutions that have been adopted over the last century in the context of, above all, the political position of the President of Poland, as well as the electoral system in the presidential election. The article is an attempt to prove the thesis that the actual political position of the head in the state in Poland depended and still depends not only on constitutional provisions, but also on specific political circumstances, and even the character and personality of politicians holding this office. In order to achieve the assumed research goal, the author uses the historical method as well as the method of institutional and legal analysis.

The interwar genesis of the office of the President of the Republic of Poland

The first records of the institution of the Polish president can be found in the so-called March Constitution of 17 March 1921. From the time Poland regained its independence in November 1918 until the election of the first president of the Second Polish Republic in December 1922, the function of the head of state was first served by the Provisional Chief of State, and then – by the Chief of

1 Pursuant to Decree of the Highest Representative Power in the Republic of Poland of 22 November 1918.
State – in both cases it was Józef Piłsudski. The March Constitution in its main provisions was the result of many compromises between the conflicted left-wing and right-wing political parties, which seemed a historical necessity at that time, both in terms of internal situation of the young Polish state, as well as its position in the international area. The works on this act included clashes of different ideas for the way president is elected, as well as the scope of authority which was supposed to be given to him. Eventually, the chosen executive structure largely corresponded to the classical model of the parliamentary-cabinet regime as a system which, at that time, was the best suited for the way politicians wanted to build democracy in the independent Polish state.

Under one of the compromises, it was decided that the president would be elected indirect for a 7-year term. According to Article 39 of the March Constitution, the president was supposed to be elected by the National Assembly (the joined chambers of Sejm and Senate) by an absolute majority of votes. Today’s supporters of modifying the election system for the office of the president of Poland towards the introduction of indirect elections often argue that the tradition of such an election of the head of state is the oldest one in Poland as it dates back to the very beginning of this office. The March Constitution said that the Assembly was meant to be summoned by the president in the last quarter of his seven years in office, and if there was a vacancy in the president’s office (due to his death or resignation, etc.) the Marshal of the Sejm was obliged to summon the National Assembly immediately so it could elect a new president. In general, it was possible that one person would be elected for the next term an unlimited number of times, and the Constitution did not set out any eligibility conditions for the office, even when it comes to the candidate’s age.

Presidency in the context of the March Constitution was a classic example of the office of a republican head of state characteristic of a parliamentary-cabinet system, which means that the president’s powers were heavily cut down and were limited to representative and ceremonial activities. Real power in

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2 Pursuant to the so-called Small Constitution, or Legislative Sejm’s ordinance entrusting Józef Piłsudski with the further execution of the office of Chief of State of 20 February 1919.

3 The following persons were elected to the position of the president of Poland under this procedure: Gabriel Narutowicz (1922), Stanisław Wojciechowski (1922), Józef Piłsudski (1926 – he did not take the office) and Ignacy Mościcki (1926 and 1933).

4 M. Bankowicz, Transformacje konstytucyjnych systemów władzy państwowej w Europie Środkowej, Kraków 2010, p. 121.
internal and foreign politics was held by the government which was also responsible for the president’s official acts, by countersignature (given by the Prime Minister himself or by one of the ministers). However, this thoroughly democratic and liberal constitution whose task was to stabilise the political situation in the reborn Poland did not fulfil its role, and the parliamentary system which it was supposed to introduce was full of disagreements between the parties, almost continuous paralysis of parliamentary work and countless crises of the cabinet. The systemic chaos which reigned over Poland laid the ground for the Józef Piłsudski’s strong-arm government. The events initiated by the so-called May Coup d’État of 1926 also meant a significant change in the political system since the works on a new fundamental statute had started. It was to re-define the systemic and political position of the president of Poland, as well the mode of his election (as it turned out later).

The August Novelisation of 1926, and the constitution of 23 April 1935 (called the April Constitution) were the first to strongly reduce the Polish parliamentarism which had been discredited in recent years. They did this by introducing a quasi-authoritarian system of government based on the dominance of the executive. The Polish president became the supreme commanding institution, strongly reinforced with new constitutional provisions. From thereon, he was to be responsible only “before the God and history”. Basically, he was meant to focus the full state authority in his hands and the other bodies (including the government, Sejm, Senate, courts) remained under his authority. One can, therefore, say that the April Constitution legalised autocracy in Poland, which actually was not that unusual in a European country at that time. Previously weak and politically neutral presidency was replaced with an omnipotent presidency, and the parliamentary-cabinet system evolved in the direction of presidentialism, with clear authoritarian influences. Under the April Constitution, the President was more than just a president – he was more like a republican king or even a Caesar-like ruler.\(^5\)

This constitution introduced a distinctly odd way (for a republic) of electing the head of state, while retaining his 7-year term. The ordinary mode provided two options. The first one was to select two candidates for a new president. One of them was meant to be appointed by the president (he could also designate himself), while the other one – by the specially convened Meeting of Electors. The Meeting was meant to consist of 80 people: 75 electors selected

\(^{5}\) Ibidem, p. 129.
by the Sejm (50) and the Senate (25) among the “worthiest citizens” and five
the so-called “wirylists”\(^6\): the Marshal of the Senate (as the chairman of the
meeting), the Marshal of the Sejm, the Prime Minister, the Presiding Judge of
the Supreme Court and the Inspector General of the Armed Forces. In such
case, citizens had to choose between the two candidates in general election.
While the second option was when the president in office did not exercise his
right to nominate one candidate. Then the election would not take place and
the new president would be the candidate selected by the Meeting of Electors.
The constitution provided also for the so-called extraordinary mode of filling
the president’s office in the event of war. In such circumstances, the president
in office was to designate his successor in case his office became empty before
peace agreement had been concluded. And it is this extraordinary mode that
was used in Poland in view of the outbreak of World War II\(^7\).

After the Polish territory was liberated from the German occupation, the
power was seized by the State National Council (KRN) formed by the Polish
Workers’ Party (PPR), and by the Polish Committee of National Liberation
(PKWN) designated by KRN as its executive body. The famous PKWN Mani-
festo referred to the tradition of the March Constitution in terms of propa-
ganda – it did not recognised the April Constitution (as a document of illegal
nature and with fascist content), or the Polish authorities in exile appointed on
its basis. During this period, the legal structure set out in the March Constitu-
tion was used. It said that in case of vacancy in the president’s office (and that
was the accepted interpretation) he would be replaced by the Marshal of the
Sejm. His counterpart was the chairman of KRN\(^8\).

Following the establishment of the Provisional Government of National
Unity and the elections to the Sejm, on 5 February 1947, the president of

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\(^6\) “Wirylists” were members of the upper house of parliament who had not been elected
but were there because of their function.

\(^7\) The first president in exile appointed in accordance with this procedure, or indica-
ted by Ignacy Mościcki, was Władysław Raczkiewicz (previous decisions to appoint Edward
Rydz-Śmigly, and then – Bolesław Wieniawa-Długoszowski had been cancelled for various
reasons). Besides, it is also worth mentioning that after the end of the war, the Polish authori-
eties in exile did not recognise decisions of the Yalta Conference and the authorities of the Pol-
ish People’s Republic, and in accordance with the abovementioned extraordinary mode, they
appointed successive presidents (after Władysław Raczkiewicz, they were: August Zalewski,
Stanisław Ostrowski, Edward Bernard Raczyński, Kazimierz Sabbat and Ryszard Kaczorowski).

\(^8\) W. Skrzydło, Ustrój polityczny RP w świetle Konstytucji z 1997 r., Warszawa 2008, p. 150.
Poland was elected – in accordance with the procedure provided for in the March Constitution which had been slightly modified by the constitutional act on electing the president of Poland, passed by the Sejm\(^9\). In practice, the president was to be elected for a 7-year term by the Sejm by an absolute majority of votes, because the Senate had been liquidated in 1946. The group of at least 50 members of parliament had the right to propose candidates. The former chairman of KRN, Bolesław Bierut, was elected for the president. Until the Constitution of the Polish People’s Republic was adopted in 1952, the legal basis of the Polish political system was the so-called Small Constitution of 1947, which set out that the Polis president was the chairman of the Council of State – a new collegial public authority responsible for the executive, next to the president and the government\(^10\). The Constitution of the Polish People’s Republic of 22 July 1952 handed the role of the collective head of state to the Council of State elected by the Sejm from its members and formally dependant on it. It was headed by the chairman of the Council of State, and the office of the president of Poland, which had not been provided for in the Constitution, was liquidated for many years.

**From the Round Table to the Constitution of 1997**

Two days after the Round Table agreements, on 7 April 1989, the amendment to the constitution of 1952 was passed, which was intended to be temporary. Surely, its most important provisions included the restoration of the Senate and thus, the return to the bicameral parliament, and the liquidation of the Council of State and restitution of the president’s office in the form of the president of the Polish People’s Republic. Under the agreement concluded at the Round Table, this office was to be filled by a representative of PZPR, and, therefore, it was meant to guarantee the interests of the government. Therefore, the president of the Polish People’s Republic was given some considerable powers, like the ones in relation to the Sejm and the Senate which he could dissolve when it passed an act which “made impossible for the president to

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\(^10\) Apart from the president of Poland as the chairman of the Council of State, it also included the Marshal and deputy marshals of the Sejm, president of the Supreme Audit Office (NIK) and, during the war, the supreme commander of the Polish Army. The constitution of 1952 changed this composition significantly.
perform his constitutional duties”. It was a model of presidency which did not make reference to the March Constitution, or the April Constitution. It is difficult to classify it clearly, however, it can be colloquially described as a strong presidency. But the new mode of electing the president, which was then accepted, drew on the March Constitution, as the president was to be elected for a 6-year term (with the possibility of one re-election) by the National Assembly by an absolute majority of votes in the presence of at least half of the statutory number of members of the Assembly. At least ¼ of the total number of members of the Assembly could propose a candidate for the office (there could be up to four of them). In the event that no candidate received the required majority of votes, each successive ballot was taking place without the candidate who had received the lowest number of votes in the previous ballot.

In view of social and political pressure, General Jaruzelski declared his willingness to step down from the president’s office, by making the decision dependant on the Sejm determining the election calendar. Finally, on 21 September 1990, the Sejm passed a resolution to shorten the term of the parliament and the president, by pointing out that the presidential election should be held no later than on December of that year. A few days later, on 27 September 1990, the Sejm passed the amendment to the constitution, together with the act on electing the president. It provided that the president would be elected directly for a 5-year term, under a system of absolute majority. Therefore, the mode of electing the president of Poland being in force to this day was adopted at that moment. One can certainly ask what led the political elite of that time to opt for direct election so explicitly, rather than choose the previous mode when the president had been elected by the parliament. On the one

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11 From the beginning, General Wojciech Jaruzelski, the chairman of the Council of State, was meant to assume the position of the president of the Polish People’s Republic. Such a mode of electing the president was the only chance for him to take the office because, after the so-called ‘contractual elections’, the Sejm was dominated by the communists and their allies. It is hard to imagine that General Jaruzelski could succeed in a general election.

12 In practice, this procedure was used only once, when on 19 July 1989, General Wojciech Jaruzelski was elected the president of the Polish Peoples’ Republic (and then, after the country’s name was changed into the “Republic of Poland” – the president of the Republic of Poland). Although he was the only candidate proposed, he received only one vote more than the required absolute majority.

hand, this method corresponded better with the amended Constitution of the Polish Peoples’ Republic (and then with the Small Constitution of 1992) which provided for a model of strong presidency, while ensuring that the president elected directly by the people had greater legitimacy to exercise his powers. However, we need to be aware of the political and social circumstances in which this decision was made. The political circles concentrated around the “Solidarity” mostly wanted to give up for good the rules applicable in the Polish Peoples’ Republic, which said that the representatives of the communist regime could hold key political positions without social approval\textsuperscript{14}. Therefore, the idea was to introduce completely new rules of the game, which were based on the democratic principles of general, direct and secret election, also for the position of the president of Poland. Actually, those were the expectations of the Polish society because this change implied giving power to the nation as a sovereign. The power which had been taken from it for many years. This mode of electing the president of Poland was also to serve as a factor stabilising the political situation within the country and increasing the credibility of the Polish transition to the foreign partners\textsuperscript{15}.

Changing the mode of presidential election contributed to the increased authority and systematic importance of this office. However, when combined with the Lech Wałęsa’s style of presidency, it led to many complications in the way the existing constitutional provisions were interpreted. Anyway, a new fundamental state had to be created, which would also organise the systemic issue of the Polish state and its most important institutions, in a comprehensive way. On April 1992, under the so-called constitutional act, a procedure leading to the new constitution was introduced, and in October of the same year, another “Small Constitution” was adopted, whose task included regulating the relationship between the legislature and the executive. And although the assumption was that this constitution would introduce in Poland a regime similar to the French one, work on a new constitution, also in terms of the political position of the president of Poland, went in a completely different direction.

The period between 1989 dated as the beginning of political transformation and 1997 when the new constitution was adopted, is characterised by quite

\textsuperscript{14} A. Antoszewski, System polityczny RP, Warszawa 2012, p. 168.

\textsuperscript{15} B. Pytlik, Naczelnne organy władzy w projektach Konstytucji III Rzeczypospolitej Polskiej: struktura i odnawianie składu, Warszawa 2005, p. 69.
a chaos when it comes to constitutional principles and the functioning of the most important institutions of political power. It is understandable, because it was the time when there was a need to react dynamically to the changing political circumstances by adjusting the Polish state to the processes of democratisation. Fate of the Polish president’s office, including the election system and the shape of the presidency, is a great illustration of this. However, it seems curious that the constitution, which was being developed for many years in a much more peaceful period, contains so many ambiguities and inaccuracies in this matter, which have repeatedly led to the aforementioned competence arguments and conflicts between the president and the Council of Ministers.

Pursuant to the 1997 Constitution of Poland, the president is still elected directly for a 5-year term, with the possibility of only one re-election. The right to propose candidates for a president is reserved for political parties and voters, but every nomination must be supported by signature of one hundred thousand citizens having the right to elect members of the Sejm. The requirements for the candidates are not very demanding: they must be at least 35 (on the day of election), have Polish citizenship and enjoy full election rights for the Sejm. The Polish President is elected by an absolute majority of votes (the whole country is one constituency), and if any of the candidates does not gain such support, there is a re-election after two weeks with the two candidates who had been given the most votes in the first round. If any of these candidates does not want or cannot participate in the second round, he is replaced with the candidate who had been given the third largest number of votes in the first round, and the date of the second round is moved for another two weeks. Election protests and complaints about the irregularities in holding the ballot are made to the Supreme Court that must investigate them and decide whether the election is valid or not.

As for the mode of presidential election, the solution from 1990 was maintained, with some minor modifications of a more technical nature. In the course of work on the new constitution, there was a full agreement between the major political parties of that time so the president must be elected directly. However, at the same time, the new act significantly limited the scope

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16 The obligation to carry out a second round of voting was introduced in 1995 (under the amendment to the Act on electing the president, and then – the 1997 constitution). In 1990, there was a rule that if a candidate resigned or was not able to participate in the second round, the voting would not be repeated and the other candidate would be appointed as the president.
of authority of the head of state in relation to the Small Constitution of 1992. It did not contain any competence and organisational provisions anymore, which had previously brought Poland closer to the semi-presidential political system, and it had stricter regulations which are more characteristic of a parliamentary-cabinet regime. This issue was even more controversial because a few political parties and Lech Wałęsa, who had been the president until 1995, opted to maintain a strong presidency and a superior position of the president.

Evolution of the political position of the President of the Republic of Poland

To sum up the previous considerations, one may attempt to specify several stages showing the evolution of the Polish political system after 1989. To a large extent, it was related to the constitutional position of the President of the Republic of Poland, which has undergone significant changes over the last 30 years. The most interesting in all of this, however, is that this position depended not only on the provisions of this or that document of a constitutional rank, but also on specific political circumstances, as well as the attitude of the politicians holding the office of the president. Some of them abused their power to a greater extent than others, even trying to go beyond the limits given to them by the constitution. Others in turn were able, often above political divisions, to act as a “guardian of the constitution” and to use their powers mainly to stabilize the political system and eliminate tensions between individual political parties.

The time of Wojciech Jaruzelski’s short presidency, which lasted just over a year, can be defined as normative semipresidentialism, from a legal and constitutional point of view reminiscent of the regulations adopted in the Constitution of the Fifth Republic of France. The constitutional rights of the president – for example in relation to the procedure of appointing and dismissing the government, the right of legislative initiative, the right of veto or the right to dissolve the parliament – were very extensive. However, Jaruzelski’s politi-

17 M. Borucki, Konstytucje Polski..., p. 276.
18 A famous and widely interpretable provision that the president could dissolve both chambers of parliament if their decisions made it impossible for him to perform his constitutional duties.
cal position was extremely weak, which resulted primarily from the lack of legitimacy of his rule and the consistently diminishing political role of the Polish United Workers' Party. This led to a situation in which Wojciech Jaruzelski, de facto, did not use his powers, and the said normative semipresidentialism assumed in practice the form of a parliamentary-cabinet system with the central position of the head of government\(^\text{19}\).

The presidency of Lech Wałęsa, at least until the entry into force of the Small Constitution, was the most reminiscent of the regime described as semipresidentialism – and not only normative but also factual. Walesa not only “inherited” Jaruzelski's extensive powers, but additionally he held a democratic mandate, thanks to which his rule was more legitimate. Of course, the issue of interactions between the legitimacy of power and the type of the electoral system is much more complicated. General Jaruzelski did not use his wide powers not only because he had been elected indirectly but also because he was aware how weak his mandate was, while Lech Wałęsa exercised his powers in full. And again, it was not only due to the fact that he had been elected directly and had considerable public support, but mainly because of the leadership style he represented. This style of leadership turned out to be even more problematic after the entry into force of the Small Constitution, which, admittedly, maintained the semi-presidential regime in Poland, but in comparison with the French model – to a large extent limited it. The president's powers were still very extensive, however, he did not have the freedom to dissolve the parliament, and his influence on the process of appointing and dismissing the government was significant only when there were problems with the formation of an adequate government majority. Lech Wałęsa had a big problem with accepting these restrictions. He expressed this many times, for example when he threatened to dissolve the parliament without a proper constitutional basis, which would be the application of the so-called “Yeltsin variant”\(^\text{20}\).

As part of the same constitutional restrictions, for the first two years Aleksander Kwaśniewski held his presidency, which, however, did not cause such perturbations as in the case of his predecessor. The new constitution of 1997 led to the evolution of the semipresidential regime in Poland in the direction of the parliamentary-cabinet system, which of course clearly reduced the role


and importance of the head of state in favour of the head of government. This is evidenced by the deprivation of the president of the possibility of dissolving the parliament or the actual lack of influence on the process of appointing the prime minister and members of the government. However, it is worth emphasizing that as for the features of the parliamentary-cabinet system, the president in Poland has quite a lot of elaborate powers (such as the right of veto, legislative initiative, creative powers, etc.), which means that he has significant opportunities to effectively influence the legislative process, as well as to appoint many important state officials.\textsuperscript{21}

\textbf{Conclusions}

The analysis conducted above clearly confirms the thesis put forward in the introduction that the actual political position of the Polish president depended in the past (and in fact still depends) not only on constitutional provisions, but also on specific political circumstances, president’s attitude to constitutional tradition or even his character and personality. On the one hand, one can give an example of Lech Wałęsa who repeatedly abused his power and saw his role as absolutely dominant in the framework of the Polish political system that was developing and strongly evolving during his presidency. It seems that his attitude towards the constitution, as well as the lack of due respect for other public authorities, was one of the main reasons for the defeat in the 1995 presidential election, when he failed to get reelected.

A completely different attitude was represented by Wałęsa’s successor as the president of Poland – Aleksander Kwaśniewski. During his 10 years in office, he had to adjust to and act in accordance with two different constitutions – the Small Constitution and the current Polish constitution. Regardless of which one was in force, Kwasniewski acted as its guardian. Although he willingly used his powers (such as the right of veto), he did not undermine the position and competence of other institutions, nor did he interfere in their work or composition. This was happening no matter if parliamentary majority was politically friendly of hostile to him. In the period of the classic cohabitation (1997–2001), when he had to cooperate with the right-wing government headed by Jerzy Buzek, there were no serious political or constitutional crises.

\textsuperscript{21} Ibidem, pp. 154–155.
From this point of view, the cooperation between Lech Kaczyński and the government of Donald Tusk, obviously under the same constitution, was definitely more complicated. The years 2007–2010 can even hardly be called classic cohabitation due to the historical and ideological closeness of the political groups of the president and prime minister. Nevertheless, the mutual dislike between them, combined with the lack of both goodwill and president’s readiness to adjust to the role which the constitution provides for him, has led to many unnecessary conflicts, which have taken on several occasions even the international dimension. The successor of Lech Kaczyński – Bronisław Komorowski – was not in this respect put to any serious test, because between 2010 and 2015 he harmoniously cooperated with a politically friendly parliamentary majority, whom he supported. One can, however, get the impression that he did not make sufficient use of the powers that the Polish constitution gives to the president, which made his presidency somewhat passive. A similar allegation can be used against the current president of Poland – Andrzej Duda, who practically completely fills the will of the Law and Justice government, which makes the role of the president in Poland more like that of Hungary – insignificant, symbolic and hence in many respects useless.

From time to time, discussions about a possible change in the Polish constitution are initiated, which could also entail a change in the political regime – and thus also the position and powers of the president of the republic. At the moment, however, it does not seem that such a change would be possible at all, especially in the face of the failure of the presidential initiative of the constitutional referendum, turned down by the second house of the Polish parliament, so indeed by the ruling party. However, it should not be ruled out that the discussion will return after some time, which seems to be heavily dependent on the results of the parliamentary elections, which, according to the plan, should take place in Poland at the end of 2019.

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22 For details see for example: Ł. Danel, *The correlation between the electoral system in the presidential elections and the constitutional position of the head of state in the light of the discussion on the change of the Polish constitution*, “Krakowskie Studia Małopolskie” 2017, No. 22, pp. 7–18.
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4. Danel Ł., The correlation between the electoral system in the presidential elections and the constitutional position of the head of state in the light of the discussion on the change of the Polish constitution, „Krakowskie Studia Małopolskie” 2017, No. 22.
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Summary
The article concerns the constitutional position and political role of the President of the Republic of Poland. Though the Author concentrates on the current constitution of Poland, that entered info force in 1997, he also reviews all the constitutions (and important amendments to these constitutions) that were adopted over the last century, so after Poland had restored its sovereignty in 1918.

The analysis is concentrated not only on the constitutional position and political role of the Polish president, but also on the way he was (and is) elected. The Author tries to prove a thesis that the actual political position of the head in the state in Poland depended and still depends not only on constitutional provisions, but also on specific political circumstances, and even the character and personality of the people holding this office.

Keywords: constitution, president, Poland, republic, sovereignty, regime, parliaments