



LAW AND ADMINISTRATION IN POST-SOVIET EUROPE

THE JOURNAL OF KOLEGIUM JAGIELLOŃSKIE TORUŃSKA SZKOŁA WYŻSZA
VOL. II: 51–63

DOI: 10.1515/lape-2015-0006

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On the essence of democracy and the election system

Key words: democratic systems, constitution, rule of law, election law

1. Introduction

Science circle and professional intellectual elite are getting more and more concerned about the condition of the state and its institutions, the way in which the idea of “a democratic state of law”, articulated in the Constitution, is being fulfilled.

It is expressed by organizing scientific conferences, where the current social and system, as well as economic issues in Poland are presented and discussed.

Still, the conformist attitude seems to be dominant in the way problems referring to pathological phenomena and situations, as well as the ones concerning ineptitude or the lack of professional and moral qualifications of the people in power are presented and discussed. This situation is caused by the commonly present political correctness, the violation of which might result in professional and social consequences.

Hence there is the tendency to present problems only in theoretical way, without any reference to the assessment of the condition of economy and the state, or social reality.

The unity of the state authorities, business and media as well as the ideological and propaganda pressure of political parties pose a real threat for the free

development of the independent political thinking and philosophical-moral ideas in the society. But a few are able to oppose this moral and intellectual pressure effectively without the risk of losing credibility, professional or social status.

2. On the essence of democracy.

A critical judgment on the condition of Polish democracy was expressed by professor Jacek Raciborski. Concluding his lecture on “The state and the people-new and old relations” he stated that, “those we voted for don’t have the power, whereas the ones in power were not voted for by us”. Referring to this thesis no one dared to risk the explanation who might have been the main player at the back of the Polish political stage, although there is no doubt, the majority of the present ones were aware of that.

This shameful and passed over dilemma of Polish reality was noticed and heavily defined in the comments of some independent intellectuals. The best example here being the statement by professor Jarosław Marek Rymkiewicz, “The most vivid example of an entirely fake image of contemporary Poland is a statement that

appears on a daily basis – that we live here in a democratic state – governed in a democratic way by democratically elected representatives...

The fact who is in power in Poland is commonly known. It is a state ruled by various cliques, coterie, mafia, gangs, and business groups. Yet, this is just the surface, and all these mafia men, gangsters, chairmen, ministers, bankers and professors, have very little idea of what is below, under them. There is the system which lets to keep almost forty million Poles in order and submission. According to the Professor this situation could be reversed if we made an attempt to return to our social ways of living, the ones that were formed during the first Republic. To something that assumed the end of the domination of gangster and mafia elites, and generally the end of domination of anything over anything”¹.

The science session, which is worth paying attention to, was held in Toruńska Szkoła Wyższa on 13th February 2011 led by the rector of the School Jan Parys Ph.D. The main topic of the session was “Culture in public life, diagnosis, threats, and challenges in the context of democratic societies of the 21st cent”. The topic, extremely up-to-date in Polish socio-economic and political reality, required interdisciplinary approach, so that the most significant cultural, sociological, prano-system, political science, and ethnical problems of the issue under discussion could be exposed. The statements of lecturers were frequently dominated with purely theoretical approach to the topic or the international context, and therefore there were too few references to Polish reality. Definitely critical reference to Polish political culture was presented in the lecture by Jan Parys Ph.D., who by quoting scandalous and morally offensive public comments of prominent politicians, pointed at the collapse of cultural values in the public life as well as the consequences resulting from this fact. Jan Parys Ph.D. claimed that the preparation the code of ethics of the civil service is a matter of great significance that could stabilize political culture. Symptomatically – assessment of the situation when it comes to respecting human rights and the functioning of public institutions in the state, presented by the Commissioner for Civil Rights Protection in his report for 2008, was crushing. It meant that after 20 years since the independence was regained we weren’t able to establish lasting system foundations of the democratic

state, or reestablish democratic order in the functioning of state organs in the way that would grant the sense of security and satisfaction to the society.

Janusz Kochanowski Ph.D, the Commissioner at that time, who died in the Smoleńsk catastrophe stated in July 2009 while summing up the work of his office in Sejm:

“On no account can there exist a state of law taking into consideration the present condition of the Polish judiciary”. Justifying this extremely strict judgment of the state organs, which are supposed to be the foundation of every truly democratic system, he recalled the following facts, that have been shocking the public for a long time.

The Commissioner brought back the case of FOZ, Kluska, Rywin, the Sports Hall in Katowice, the trial of Jaruzelski and Kiszczak, as well as the ones of Samson and a Nigerian Mol, who died without being convicted or found not guilty, as well as the case of Olewnik.

In all the above mentioned cases the prosecutor’s or court proceedings were pending extremely reluctantly, exceeding all the legal time limits as well as any rules of common sense, as the Commissioner pointed out. At the same time he stated the lack of any objective reasons for the justification of the state of matters already existing in the jurisdiction, since, “in Poland there is the largest number of judges per capita compared to other big states. For every 100 thousand of Poles there are almost 26 judges, whereas in England 7, and in France 11.9”.

Later on there appeared further drastic examples of abusing law for political purposes, other actions and negligence of the jurisdiction organs shocking the public and insulting the social sense of justice.

Political correctness forced by neo-liberal media obedient to the authorities created a distorted social perception of democracy.

In the light of political correctness democracy should be affirmed unconditionally, even in its pathologic form, i.e. neo-liberal democracy. Disobeying neo-liberal ideological assumptions often results in marginalization and rejection of intellectually most valuable, independently thinking individuals.

Nowadays, democracy is perceived as the system basing on the will of elites selected in common, equal, direct and secret elections.

The election system is based on such democratic rules and the organs of state authorities selected in this system, as well as established organizational structures of these organs and the rules of their functioning deter-

¹ J.M. Rymkiewicz, *Polacy żyją dziś w świecie fikcji*, „Fakt, Tygodnik Idei”, 18.03.2004.

mining a priori about the democratic model of a state, and its democratic system.

The immanent feature of political system referred to as liberal democracy is the fact that public authority, despite its power, limits itself to leave in the state that is ruled by it enough space for all these who don't think or feel like it does, like the stronger ones, like the majority. It is a kind of proclamation of the will to coexist with an enemy, what is more with an enemy who is weaker. By doing so it reaches the highest form of magnanimity, the most noble calling that has sounded on the Earth since the ancient history. This thought was expressed in 1929 by J. Ortega y Gasset, and reminded as a warning before it could be hastily rejected by J. Krzemiński².

What constitutes the essence of a democratic system of exercising power, and hence the type of an actual model of a democratic state.

The answer for such a question can be found in the teaching of the Saint John Paul II. The world renowned philosopher and unquestioned moral authority of our times was preaching in accordance with the social teaching of the Church that, "the essence of democracy lies in the sphere of social awareness its morality, and not only in the sphere of institutions, structures, election procedures or the rules of functioning. These undoubtedly indispensable attributes of a democratic state are without a question significant and necessary. Nevertheless, if there is no awareness of idea and the will of obeying ethical norms, then the democracy can easily transform into a particular form of totalitarian system".

Therefore, every stable democracy has the permanent foundations in the state of the social awareness whose feature is the high morale of governing elites, high civil awareness of the society and the one shaped within various organizations and societies.

In his encyclical *Contesimus Annus*, as well as in *Veritas Splendor* St. John Paul II noted the oncoming crisis of democracy, especially resulting from the fact that agnostic relativism connected with the priority of the majority create in an arithmetical way a real threat of the new totalitarian system. The warning in encyclical of John Paul II was expressed in the following way, "Today there is the common assumption that agnosticism and skeptical relativism are the philosophy and the basis suitable for democratic forms of politics. Whereas those who are convinced that know the truth and follow it without hesitation, are not trustworthy from the

democratic point of view, since they don't agree with the fact that the majority decides what is the truth, or that the truth changes according to the variable political balance. Referring to this it should be pointed out that in the situation when there is no definite truth that could be a guideline for political activity and lead it the right direction, ideas and views can be easily turned into instruments serving the purposes of authorities. History teaches that democracy devoid of values transforms into an explicit or camouflaged totalitarian system"³.

Thus, democratic system requires the freedom of union, including the opposition parties, into groups articulating a variety of interests and all the kinds of societies. The equality of every individual in the process of voting and the opportunity of participation in the effective making of public decisions is an important feature of democracy. A relatively high level of education also seems to be indispensable since it grants the ability to comprehend the public issues. People should be capable of assessing what their interest is and what is the interest of the others in order to have the ability to get involved in search for the best solutions and take responsibility for them.

However, the democratic system might take a variety of images and forms.

Nowadays democracy is comprehended in many ways.

The most common are three models of democracy: procedural, participation, and substantial.

The model of procedural democracy is perceived as the law establishing the rules of electing and being elected to the representative organs, the rules determining the system of election procedures as well as the rules of rivalry between political parties during campaigns.

The participation model of democracy means the power held by the people, i.e. when citizens really participate in exercising power, influencing defining the political objectives and the way the power is exercised.⁴

The substantial model assumes that democratic system will provide a suitable amount of material and immaterial goods making the basis for the satisfactory economic development of the state, obeying the legal order and social justice, as well as the honesty in the way that politics is practised.

³ E. von Kuehnelt-Leddihn, *Demokracja – opium dla ludu*, Łódź–Wrocław 2008, p. 87.

⁴ P. Uziębło, *Demokracja partycypacyjna*, Gdańsk 2009, p. 13–27; J. Merecki, *Jan Paweł II Contesimus Annus*, Lublin 1998; W. Kaczocha, *Demokracja proceduralna*, Poznań 2006; A. Zwoliński, *Dylematy demokracji*, Kraków 2010, p. 11–22.

² In: J. Krzemiński, *Wolność ciągle zagrożona, czyli o aktualności liberalizmu*, „Fakt, Tygodnik Idei”, 13.04.2005.

It seems, however, that the optimal democratic system ought to include all of the above mentioned model features.

In his article *Choroba Polskiej Demokracji* (The Disease of Polish Democracy) published in *Rzeczpospolita* on 17th March 2011, Bartłomiej Nowotarski writes that, "Democracy in Poland, as well as in other countries emerging with effort from totalitarian system regimes, is burdened by autocratic heritage. The most vivid image of it is the fact that victorious political powers don't respect opposition, and in the institutional dimension it means that the winner takes all. Remaining in this monopolistic formula of performing the power, the governing coalition makes various attempts to cripple the system of balanced powers, so fundamental for the essence of democracy, by manning all the crucial institutions in the state with its people".

Nowotarski points out that the democratic rule of law, and at the same time the essence of healthy democracy are expressed in undisturbed functioning of the mechanism of mutual limitation and controlling of authorities. He mentions the Government, both chambers of parliament, President, Constitutional Tribunal, the Office of the Commissioner for Civil Rights Protection.

Apart from this, plurality of political options is an equally important mechanism of mutual control. It is expressed in the multitude of political parties, their programs as well as the independence and unbiased involvement of media, which should focus on informing the public about the deficiency and mistakes made by the governing system.

The lack of tendency for compromising, inability, or unwillingness for negotiations based on the rules of partnership, as well as the rule "the winner can take all" that is burdened with the key of political majority, seem to be the immanent features of Polish political class, which is mentally burdened with the heritage of communism.

Elżbieta Królikowska-Avis, an independent journalist working in England, expresses the following opinion on media and democratic customs of authorities: I have been living in London for 21 years. In old democracies independent media look on the hands of authorities, not the opposition. They act arm in arm with the opposition, trade unions, non-government organizations. The other ones are called the establishment, court ones... I'll repeat and won't stop repeating, opposition is to create obstacles for the authorities. It is one of the pillars of democracy, one of the most important controllers of what the authorities do, and in case of infringement it

should publicize the scandal countrywide, especially when it is about the conflict of interests of society and authorities, or authorities and a citizen. In England every Wednesday for half an hour a current Prime Minister is interviewed, mainly by opposition MPs, on fulfilling his promises. If it turned out that his attitude towards his work and campaign slogans is relaxed, opposition supported by independent media would tear him apart. There is no mercy in democracy... From the perspective of democracy the hasty overtaking of the highest offices (NIK, CBA, NBP, IPN, KRRiT...) in the state by Platforma seems worrying. Did this actions manifest the respect for the law, state, citizens, the European civilization cultural heritage, the journalist is asking⁵.

The celebration of the 20th anniversary of the Commissioner for Civil Rights Protection Office finished at the end of 2009, which didn't get much interest of the media, focused on three basic human rights: the right to freedom, truth, and justice.

In the context of these three fundamental rights Commissioner the late Janusz Kochanowski stated as follows, "After the 20 years of the system transformation no longer can we pretend not to see that in our country the truth has the party image, not only in politics, where it can be acceptable up to a point, since the truth is manipulated in order to win the election and hold the power. Unfortunately, this phenomenon is also present in the sphere of media and, which is even worse, academic circles".

To justify his opinions the Commissioner presented the following examples, which as he pointed out, do not meet the requirements of the basic standards of the human rights, namely; the freedom of speech and research in science. He meant the recent situations, e.g. canceling lectures, conferences, or science seminars because of a lecturers or an inconvenient topic, or the reaction on critical opinions of media or certain circles.

It was probably due to the mercy associated with the Office, that he didn't mention universities or academies, which in his opinion, "in this way betrayed their mission". He also pointed at some odd protests (20th May 2008) against the release of a book discussing amongst the others the life of L. Wałęsa, whose content hadn't been known before the publishing.

As a result the minister of Science and University Education announced the controlling of the most merited for the Polish culture and science university, Jagiel-

⁵ E. Królikowska-Avis, *Demokracja młoda i kulawa*, „Rzeczpospolita”, 19.10.2010.

lonian University, which was followed with an attempt of depriving the university of funds if the direction of research isn't right. Summing up this piece of his pondering the Commissioner stated, "The Prime Minister, the Minister of Science, universities and academies, and finally the Supreme Court – all of them want to protect us against acquiring the inconvenient or difficult truth. I am able to understand all the sociological and political, and even psychological reasons, which make the heroes fighting for the freedom of speech deny it. I am able to understand the emotions behind it, what I can't do is accept it".

The requirements of pluralism and tolerance, which democracy cannot exist without, are well expressed by John Stuart Mill in his essay on freedom, as the Commissioner points out. Here is the fragment, "Making it impossible to express opinions that are considered wrong, is more harmful for those who disagree with them than the ones who express them".

At the end of his speech the Commissioner stated, "It is difficult to be delighted with the condition in which the Polish state was during the 2nd Republic, especially taking into consideration its tragic end. Yet, during that 20-year-long period an effective judiciary system and administration were created. A splendid legislation was introduced by Presidents decrees, which has been unmatched example so far. The development of education was made a priority. Well-working railway transport was created, Gdynia was built, and the huge construction of COP (the Central District of Industry) had been initiated. All was these was accomplished with the great effort of merging three partitioned territories into one state.

We cannot feel other way but humble if we compare this with the achievements of the 3rd Republic: disastrous condition of road system, railway in the state of crisis, extremely low level of education, inefficient and bureaucratic administration, low quality of legislation, and the judiciary not deserving its name"⁶.

Janusz Kochanowski Ph.D., an eminent authority in the field of defending democratically perceived human rights, i.e. their freedoms and respecting their dignity, referring to human rights stated, "I'd like to (fulfill) my duties in the spirit of the balance of rights and duties towards other social groups. I will not join the choir of the ones delighted to multiply endlessly undefined and unclear human rights... The list of basic ones reaches

110. It is growing in an uncontrolled way and reaches absurdity... the rights for freedom, truth and justice. are the main motif of my activity. This is my canon. It is not an unlimited number, the magma of unclear human rights, but the triad which strengthens human dignity. I cannot imagine life without the right for freedom, truth and justice...I am for the categories, which are not accepted by some, for instance strong but at the same time limited state, which guarantees the possibility of executing basic human rights...in my view we've gone too far in individualism in emancipation, release us from the category of conscience, duties towards the nation and state. It gets deeper we will lose all that we've gained throughout the centuries. I am for the tradition respecting the role of family, church, and religion in bringing up and social life, or the role of a national state the poles were fighting and dying for. I'm expressing here my world-view, which I have the right for. As the Commissioner I'm appointed to defend citizens no matter what their views are"⁷.

I think that despite the passing time the majority of Poles share this opinion.

The above presented, unusually brave and diligent assessment of the condition of the state could be articulated only by a constitutional organ of the state truly independent, and represented by the Man, who really cared for the reason of State.

The above quoted large parts of the comments of the late Janusz Kochanowski Ph.D. are aiming at making readers aware of the greatness of this man, his nobleness and uncompromising attitude in the way he performed the duties of his Office for the welfare of the Polish Republic.

The freedom of union, also in opposition parties, groups articulating a variety of interests and all kinds of associations, is indispensable in the democratic system. The equality of every individual in the process of voting and the possibility of participating in the effective making of public decisions is also a significant element of democracy. Another important thing is a relatively high level of citizens' awareness and culture. People should be able to estimate what their interests are as well as what the interests of the others are, to be able to get involved in searching for the best solutions and taking common responsibility for them.

Parties should aim at working within the established legal system and not against it, and by the legal sys-

⁶ On the protocol from the conference published in *Ostoja słabości i niesprawiedliwości*, „Gazeta Polska”, 15.07.2009.

⁷ J. Kochanowski, *Jestem organem konstytucyjnym*, „Dziennik”, 19–20 01.08.

tem I mean respecting the rules of the Constitution, the authority of legally established government and people representing it, while respecting the autonomy of political parties and their right to express the opposition standpoint towards the governing system.

However, in Poland the party system and the rules of its functioning have been deeply deformed with the harm for the democratic order in the state.

In the article *Naród bezpaństwowy i apolityczny* (*A stateless and apolitical nation*) published in the weekly magazine "Europa" on 5th May 2004 Bronisław Łagowski wrote, "Patrocracy is a distortion of democracy. A large part of society is convinced about this. It is outraged by this and is looking for a factor that could limit the role of parties. Anyway, parties are not perceived as independent in taking essential decisions. These, according to a common opinion, are dictated to them by centers of oligarchic character, and there is doubtlessly the domination of the medial oligarchy over parties. In such a situation the power is passed to the powers not limited by the constitution and not holding responsibility. This kind of system degeneration is also known in the Western democracies, yet in Poland it is of bigger significance due to the weakness of the state".

The remarks on the essence of democracy expressed in the text as well as opinions on this issue expressed by eminent authorities of public life, are still up-to-date after a decade. The situation in the state has deteriorated dramatically since then, which is proved by such scandalous facts as, "the gambling scandal, IT scandal, bug scandal and the others, showing the developing state of irresponsibility and demoralization on the top of authorities and in the whole system of exercising power. It is not the legal and system rules of functioning of the state that has become the problem of democracy in Poland, but deeply demoralized establishment ruling the country in all the aspects of its activity.

Making the process of stating law for fulfilling various personal, usually party interests, is a particularly dangerous form of the deformation of democracy. Such a practice, according to Friedrich A. von Hayek, an eminent 20th century philosopher, leads to the destruction of a democratic society⁸.

Just a couple of examples are enough to present the devastation of the rules of a democratic state of law at the stage of parliamentary proceedings by the govern-

ing system of authorities. these are the following behaviours:

- instead of controlling the Council of Ministers the parliament has become a device of voting over bills forwarded by the government and the parliamentary majority,
- passing bills full of mistakes and contradictions, while rejecting everything that is suggested by the opposition and pointed at by specialists,
- rejecting the legislative initiatives of citizens and referendum motions during the first reading,
- holding in so called "Freezer" projects of bills inconvenient for the governing system,
- breaking MPs conscience by the violent enforcement of party discipline while voting projects of bills concerning world-view issues.

Summing up it is worth quoting the words of Ludwig von Mises, "Democracy is not a good that can be enjoyed without any effort on our side. On the contrary, it is a treasure, which ought to be defended daily and every time strive to achieve it with an effort".

3. On the election system in Poland

The fundamental importance of the election law for respecting constitutional rules of the state system had already been observed at the beginning of the 2nd Republic. the weight of this problem was emphasised in the comments to Representation of the People to the Sejm and Senate in 1922 by rev. Kazimierz Lutosławski Ph.D. when he wrote, "even with the best constitution a bad electoral law may grant the authority to people who would violate it and would lead the State against the Constitution"⁹.

This warning comes true dramatically in the current socio-political situation in Poland considering that the choice of deputies to various representative organs of authorities is constantly getting worse, as the public life is more often dominated by political parties focused around their leaders, waging permanent war between each other.

It is assumed that the election system is the foundation of democracy. There needs to be made a clear distinction between the election system and election procedures.

The election system determines the basic rules of citizens' participation in the election process as well as

⁸ F.A. von Hayek, *The Constitution of Liberty*, The University of Chicago Press, p. 106–110.

⁹ <http://www.rpo.gov.pl>, 11.11.2011.

the rules of shaping representative organs of authority in the state. It is the foundation of democracy when it is adjusted to particular socio-political reality of a particular state and society, to the level of citizens' awareness, and the general culture level. Otherwise, it may only be the faking of a democratic state.

The election system also has to take into consideration democratic tradition and political culture, which are shaped throughout the centuries. Therefore, we cannot say that after the transition from a totalitarian system to a democratic one the system of election can be modeled on the experience of the states with better rooted democratic tradition. What is good for societies with better preserved legal and citizens' culture, in the societies comprehending the essence of democracy and its importance for the common welfare, isn't necessarily appropriate a society in which awareness has been manipulated and deprived in the times of communism and post-communism.

The above remarks are associated with the current socio-political situation in Poland, where the election system doesn't meet social expectations, namely it does not guarantee the election of representation in the organs of authorities at all levels from amongst competent individuals, with the high level of national and patriotic awareness, people with clean hands, not fouled with scandals, from amongst the people not entangled in the milieu connections of suspicious character.

The proportional election system, dominant in Poland, strengthens a "stricte" party based system of authorities. People from the outside of the party system don't enter the representative organs. They don't enter practically since theoretically there is such a possibility by creating so called citizen election comities. However, in reality the practice of setting up such comities, in Polish social awareness and when political parties are financed from the state budget, is marginal.

Talking about election system one has to distinguish between constitutional rules of election system and election procedures understood as the organization of elections, the way of counting votes and determining the result of elections and referenda.

The proportional election system that is currently in power in Poland is understood by a narrow group of professional politicians and election officials due to its complexity.

The majority of citizens perceive this system through the perspective of multiple-member constituencies, in which one votes for a coincidental candidate placed on a multi-page voting list, often including a

couple of hundreds of names grouped according to the party key.

The system is sometimes modified.

In the Polish election regulation there is for instance so called 5% threshold limit. Below it the votes are not passed for parties or comities, which haven't reached it in elections. These votes are passed in proportional way to parties and comities that have reached this critical point.

This way of dividing mandates is a complex mathematical calculation, entirely incomprehensible for voters, which in addition drastically distorts the actual result of elections expressed by voters' preferences during the voting. Therefore, the votes are passed against the voters' will to candidates and parties whose programs are not supported by them.

Thus, it cannot be expected that voters will identify with deputies of public authorities created in such a way, when they are aware of the fact that axiological and program selection is illusionary in such a system of election. Besides, the personal criteria of candidates are of little significance for voters, since the voting lists and the sequence in which candidates are placed on them depend entirely on the discretionary competence of the parties management.

The situation of particular candidates in this system is therefore a derivative of the conditioning of particular political parties, their programs and ideologies¹⁰.

Such a system has led to an extreme making public authorities political bodies and to extremely negative perception of so called "partyjniactwo".

The proportional election system is applied in the election of MPs to Sejm (the lower chamber of Parliament) and representatives of local administration – county council (rada powiatu) and province assembly (sejmik wojewódzki).

On the other hand, the majority system is applied in the election of the President of Poland, Senators, and mayor of a village, mayor, and president, as well as commune council (rada gminy).

What is the idea of the majority election system which is demanded in vain by the majority of the society and its elites.

The majority single-member district election system is based on the idea that only one candidate who gets the largest number of votes becomes a representative of the community in relatively small constituencies.

¹⁰ Compare: A. Jarecka, *Zasada powszechności i równości w polskim prawie wyborczym*, Warszawa 2000, p. 165.

In this system every citizen meeting the criteria determined in the regulations of the bill may run for a representative mandate. This individual doesn't have to be approved by a party to be on the list, since party lists don't exist in such a system at all.

In this system an MP or councilor depends more on voters than on his party since he owes his election directly to voters. In this way a natural bond between a deputy and voters is established, as well as the sense of responsibility for the held function.

The changes of currently existing proportional election system should be aiming at the liquidation of election threshold and the requirement to place candidates on lists in alphabetical order. Such a legislative activity would make it possible to reestablish to some extent democratic credibility and transparency to the election system, and on the other hand would make it indirectly possible to identify a voter and a deputy in axiological way.

The current election system is a contradiction of a democratic legal order since it creates to authorities individuals appointed by political parties and not by voters, not by the society (in just few case by non-party election comities).

Therefore, numerous attempts to break proportional election system and omnipotence of political parties in appointing deputies was futile.

The negligence concerning the examination of various trouble and pathologies in public life contributes to the fact that the election system in Poland is in fact only faking of a democratic system since the citizens' influence on the election of representation organs as well as shaping social and economic policies of the state is minimalised. What counts are the interests of political parties, a fierce fight between them for influence, power and offices. The interest of the state, its the reason of State, has been moved background in this situation.

In the article *Wagary w smutnym Kraju (Playing truant in the unhappy State)* published in Rzeczpospolita no. 287 Mariusz Wis states while characterizing the pathology of the proportional election system that, "we are turning in a vicious circle of political mediocracy. We don't vote in elections since we don't see any worthy and familiar candidates. There are no worthy pretenders, because we don't have single-member district election system, which in a natural way would select the best ones. There is no single-member district system, since mediocre MPs don't have any personal interest in introducing it, as it would eliminate them from lucrative political life. And so the poor circle of

politics is turning with less and less participation of the society".

In the above mentioned article Mariusz Wis points out that the election system is the core of the philosophy of ruling the country. The most significant events of political and economic character result from it. Therefore, according to him, there is no more significant bill than electoral law, since it is the source of numerous good and bad rights, eminent and mediocre personalities. He emphasises that democratic bills building up peace and welfare of citizens or on the other hand the ones that only take care of party interests, which in their extreme form may even generate wars, emerge from it.

The constitutional rule of presumption of innocence before the valid court decision is issued should not pose an obstacle for the elimination from the public political activity of discredited individuals, who have lost elementary moral qualifications for holding public offices and who are subjects of a prosecutor's preparatory proceedings.

This category of people should be under more rigorous rule of being deprived of the right to execute the mandate, also in case of taking part in elections to the organs of public authorities. This issue hasn't been settled in the current legislation.

Thus, it seems that the rule of presumed innocence, till the guilt hasn't been proved with a valid court decision, requires the constitutional rational interpretation when it refers to public officer and deputy.

The Constitutional Tribunal has dealt with this issue partially hearing the case from the motion of the Commissioner, in which he expressed the opinion that dismissing a customs officer from service on the basis of an indictment and applying preliminary custody, violates the rule of presumed innocence. Dealing with this issue the Tribunal in its judgement from 19th Oct. 2004 K1/04 stated the following: The problem of honesty and credibility of people in civil service is of great significance in Poland. Thus, people in the service are under the rule of specific regulations. Legal status of customs officers stands out amongst other uniformed services and the specifics of their job justifies applying more rigorous requirements of employment. The actions of Customs shape the authority of the state, hence high requirements concerning the ethics of its functionaries. Therefore, the changes questioned by the Commissioner are justified and don't violate the constitutional rule of the equality of all citizens towards the law.

The above mentioned rule should be applied to a deputy of public authorities organs, who are the ones

shaping the image and authority of the State, and establish the legal order that is in power.

The lustration statement concerning the possible service or cooperation with the security organs is another problem.

The Act of 11th April 1997 on disclosing work or service in security state organs or cooperation with them between 1944 and 1990 of people holding public offices¹¹ requires the candidates in the President elections or in the parliamentary ones to make a lustration statement on possible service or cooperation with the security services.

The fact of making a lustration statement that is contrary to the truth results in depriving this person of the passive election right for 10 years on the basis of court decision.

At the same time the fact of public declaration on cooperation with these organs does not result in any negative consequences for a candidate, and yet such a cooperation should disqualify such a person in moral and citizen way from the public service.

While expressing critical remarks on the current election system one should mention the question of election forgery, which took place during the election to the organs of local self-government in October 2014. In no way, however, can we blame for the state of matters the system determined by the regulations of the election code, even though, removing from it in 2011 the regulation on the necessity of placing in the protocol stating the results of the elections the reasons for considering a particular vote as invalid one, was an evident mistake. There were also unquestionable technical mistakes that could distort the results.

However, there is no doubt that the reason for deficiencies, including forgery of the results of the elections, should be found in people under political pressure or rank dependence of the numerous members of election commissions. For this particular reason Obywatelski Ruch Kontroli Wyborów (The Citizens' Movement of Controlling Elections), which spread country wide in unprecedented way, may effectively prevent possible cases of forgery in the oncoming president and parliamentary elections.

The independence of a deputy is expressed in the idea of "a free mandate".

Professor Paweł Śpiewak, present in politics until recent times, stated in "Rzeczpospolita" that, "it is impossible to be independent in Polish politics, act according to one's views. What is important is the party discipline. The leader of a party and his milieu decide about everything for all MPs"¹².

In such conditions the election mandate is no longer the foundation of an MP's independence, although the institution of a mandate determines the real sense of representative democracy.

The election mandate, on the grounds of the theory of law, is referred to most often as the authorization given to a deputy by voters as a consequence of an election act. The authorization perceived in such a way means acquiring certain rights and duties as a result of elections and is of a strictly personal character. It means that these rights and duties refer exclusively to a deputy and not an organization on behalf of which he holds a mandate. Therefore, a mandate of an MP, councilor is a free mandate.

The institution of a free mandate is attributed with three features:

- general character, which means that a councilor is treated as a spokesman of electors' will, or the whole self-governing communities, and not only the voters who voted for him
- independence means the lack of legally binding commitment towards individual or institutionalized groups of voters
- irrevocability, means that a council cannot be individually dismissed by the use of the legally accessible means, and he loses his mandate only in case of valid court decision for a crime committed willfully¹³.

The same features can be attributed to a mandate of an MP or a senator. No legal regulation of the institution of representative mandate in the current legal system led to pathological distortion of this basic institution in the system of representative democracy. It is about the fact that deputies usually bound by their membership in a particular political party act most often in accordance with the party discipline and articulate party interests, and not the ones of the community they represent. The tendency of subordinating deputies

¹² P. Śpiewak, *Polityka uwiadła ekspertów*, „Rzeczpospolita”, 1–3.04.2009.

¹³ Compare: Z. Bukowski, T. Jedrzejewski, P. Rączka, *Ustrój samorządu terytorialnego*, Toruń 2005, p. 155–157; *Samorząd terytorialny w Polsce*, P. Tarno (ed.), Warszawa 2004, p. 138–140.

¹¹ Ustawa z dnia 11 kwietnia 1997 r. o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944–1990 osób pełniących funkcje publiczne, t.j. Dz.U. z 1999 Nr. 42, poz. 428 ze zm.

to the party interests was getting stronger, the more political parties were becoming focused around their leaders and focusing their attention on political struggle in order to gain power.

The rule of a free mandate is expressed in art. 4 of the Constitution, which states that the Nation exercises power by its representatives or directly and art. 104 point 1 stating that MPs are the representatives of the Nation, as well as art. 104 point 2, which includes the text of MPs' oath, "I solemnly declare to fulfill my duties in honest and diligent way towards the Nation, defend the sovereignty and interests of the State, do everything for the welfare of the homeland and good of citizens, obey the Constitution and other laws of the Polish Republic".

In accordance with these constitutional rules an MP ought to act in his choices and decisions with his own conviction and the system of values that he follows. He should be able to communicate freely with his constituents, choose the sources of information independently and use them according to the reason of State¹⁴.

The act on exercising a mandate of an MP and senator from 9th May 1996 with numerous amendments, the recent one in 2010, states that MPs and senators exercise their mandate acting in accordance with the welfare of the Nation.

Art. 6 of the act states that an MP or senator cannot be held responsible for his activities performed within his mandate, unless it violates the right of third parties. Then, he can be held liable after Sejm or Senat have agreed. Holding an MP or senator liable for other deeds also requires the agreement of Sejm or Senat.

Further on in art. 14 the act states that fulfilling his duties an MP or a senator has the right to express his standpoint as well as forward motions referring the issues discussed during assemblies of Sejm and its organs, e.g. forwarding interpellations and inquiries. They have the right to acquire information and explanation from the members of the Council of Ministers and representatives of the state organs. The bill states that MPs receive remuneration equal to the one of an under-secretary of state.

The objective of all these guarantees of the independence of MPs and senators is to strengthen the idea of a free mandate.

The mandate of an MP, senator or a councilor is a free one. It means that a deputy ought to take all decisions

on his own, according to his convictions, acting according to the interest of a community he represents and law that is currently in force. Therefore, he shouldn't act according to political or business instructions, or pressure of other influential corporation circles, if this could mean the violation of the above described rules. The lack of the legal regulation of the institution of a representative mandate in law that is currently in force has led to pathological deformation of this fundamental institution of the representative democracy system.

The problem is that deputies bound with the membership of a particular political party act more often in accordance with party discipline and articulate party interests and not the ones of a community they represent.

In democratic state with stabilized political stage voters have the choice between parties that can be easily identified on the basis of their election programs as the right, centre, or left wing ones. Due to that there appears the tendency to limit the formula of a free mandate with the party membership. In the system of proportional election such a situation frequently decides on organization and financing the election campaign of an MP, and as a result on his election chances. Such conditions cannot be compared to the Polish situation, where the programs of social and economic development are no longer significant for parties struggling for power.

Also authorities and independent characters no longer play a dominant role in social and political life. Public space, on the other hand, has been filled by people who are at disposal and submissive with mediocre qualifications.

It is these negative phenomena and no social opposition that contributed to the current crisis on the level of national states as well as the world one, to the crisis of family and civilization in all its social aspects.

There could be heard common calling for the reestablishment of significance of values in the lives of nations and states.

Conclusions

In democratic system the freedom of union, also in opposition parties, in groups articulating a variety of interests and all kinds of associations is indispensable. Also the equality of all individuals in the process of voting and the possibility to participate in the effective making of public decisions is a significant element of democracy. The relatively high level of awareness and culture of citizens is indispensable as well. People should be

¹⁴ Compare: B. Banaszak, *Mandat to nie parasol ochronny*, „Rzeczpospolita”, 20.01.2005.

able to estimate what their interest is and what is the interest of the others, to be capable of getting involved in searching for the best solutions and taking common responsibility for them.

In the article *Naród bezpaństwowy i apolityczny* (*A stateless and apolitical nation*) published in the weekly magazine "Europa" on 5th May 2004 Bronisław Łagowski wrote, "Patrocracy is a distortion of democracy. A large part of society is convinced about this. It is outraged by this and is looking for a factor that could limit the role of parties. Anyway, parties are not perceived as independent in taking essential decisions. These, according to a common opinion, are dictated to them by centers of oligarchic character, and there is doubtlessly the domination of the medial oligarchy over parties. In such a situation the power is passed to the powers not limited by the constitution and not holding responsibility. This kind of system deformation is also known in the Western democracies, yet in Poland it is of bigger significance due to the weakness of the state".

After 5 years the opinion is still up-to-date, and the struggle between political parties on the domination over the media has become even more ruthless. The situation in the state has deteriorated dramatically since then, which is proved by such scandalous facts as, "the gambling scandal, IT scandal, bug scandal and the others, showing the developing state of irresponsibility and demoralization on the top of authorities and in the whole system of exercising power. It is not the legal and system rules of functioning of the state that has become the problem of democracy in Poland, but deeply demoralized establishment ruling the country in all the aspects of its activity.

The celebration of the 20th anniversary of the Commissioner for Civil Rights Protection Office finished at the end of 2009, which didn't get much interest of the media, focused on three basic human rights: the right to freedom, truth, and justice.

In the context of these three fundamental rights Commissioner the late Janusz Kochanowski stated as follows, "After the 20 years of the system transformation no longer can we pretend not to see that in our country the truth has the party image, not only in politics, where it can be acceptable up to a point, since the truth is manipulated in order to win the election and hold the power. Unfortunately, this phenomenon is also present in the sphere of media and, which is even worse, academic circles".

To justify his opinions the Commissioner presented the following examples, which as he pointed out, do not

meet the requirements of the basic standards of the human rights, namely; the freedom of speech and research in science. He meant the recent situations, e.g. canceling lectures, conferences, or science seminars because of a lecturers or an inconvenient topic, or the reaction on critical opinions of media or certain circles.

It was probably due to the mercy associated with the Office, that he didn't mention universities or academies, which in his opinion, "in this way betrayed their mission". He also pointed at some odd protests (20th May 2008) against the release of a book discussing amongst the others the life of L. Wałęsa, whose content hadn't been known before the publishing.

As a result the minister of Science and University Education announced the controlling of the most merited for the Polish culture and science university, Jagiellonian University, which was followed with an attempt of depriving the university of funds if the direction of research isn't right.

Summing up this piece of his pondering the Commissioner stated, "The Prime Minister, the Minister of Science, universities and academies, and finally the Supreme Court – all of them want to protect us against acquiring the inconvenient or difficult truth. I am able to understand all the sociological and political, and even psychological reasons, which make the heroes fighting for the freedom of speech deny it. I am able to understand the emotions behind it, what I can't do is accept it".

I think that despite the passing time the majority of Poles share this opinion. The requirements of pluralism and tolerance, which democracy cannot exist without, are well expressed by John Stuart Mill in his essay on freedom, as the Commissioner points out. Here is the fragment, "Making it impossible to express opinions that are considered wrong, is more harmful for those who disagree with them than the ones who express them".

At the end of his speech the Commissioner stated, "It is difficult to be delighted with the condition in which the Polish state was during the 2nd Republic, especially taking into consideration its tragic end. Yet, during that 20-year-long period an effective judiciary system and administration were created. A splendid legislation was introduced by Presidents decrees, which has been unmatched example so far. The development of education was made a priority. Well-working railway transport was created, Gdynia was built, and the huge construction of COP (the Central District of Industry) had been initiated. All was these was accomplished with the great effort of merging three partitioned territories into one state.

We cannot feel other way but humble if we compare this with the achievements of the 3rd Republic: disastrous condition of road system, railway in the state of crisis, extremely low level of education, inefficient and bureaucratic administration, low quality of legislation, and the judiciary not deserving its name¹⁵.

The above presented, unusually brave and diligent assessment of the condition of the state could be articulated only by a constitutional organ of the state truly independent, and represented by the Man, who really cared for the reason of State.

Janusz Kochanowski Ph.D., an eminent authority in the field of defending democratically perceived human rights, i.e. their freedoms and respecting their dignity, referring to human rights stated, "I'd like to(fulfill) my duties in the spirit of the balance of rights and duties towards other social groups. I will not join the choir of the ones delighted to multiply endlessly undefined and unclear human rights... The list of basic ones reaches 110. It is growing in an uncontrolled way and reaches absurdity... the rights for freedom, truth and justice. are the main motif of my activity. This is my canon. It is not an unlimited number, the magma of unclear human rights, but the triad which strengthens human dignity. I cannot imagine life without the right for freedom, truth and justice... I am for the categories, which are not accepted by some, for instance strong but at the same time limited state, which guarantees the possibility of executing basic human rights... in my view we've gone too far in individualism in emancipation, release us from the category of conscience, duties towards the nation and state. It gets deeper we will lose all that we've gained throughout the centuries. I am for the tradition respecting the role of family, church, and religion in bringing up and social life, or the role of a national state the poles were fighting and dying for. I'm expressing here my world-view, which I have the right for. As the Commissioner I'm appointed to defend citizens no matter what their views are"¹⁶.

The above quoted large parts of the comments of the late Janusz Kochanowski Ph.D. are aiming at making readers aware of the greatness of this man, his nobleness and uncompromising attitude in the way he performed the duties of his Office for the welfare of the Polish Republic.

The quality of representative staff in the organs of authorities is decisive when it comes to the quality of public life, as well as the quality and shape of a democratic state of law. Yet, now the election regulations currently in power do not take into account the qualification requirements that candidates for posts in representative authorities should meet, apart from the formal ones, such as age, citizenship, no criminal record. These are the people who are to make decisions concerning the nation and state, rights and duties of citizens, the quality of life on the local and state level.

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