LAW AND ADMINISTRATION IN POST-SOVIET EUROPE

THE JOURNAL OF KOLEGIUM JAGIELLOŃSKIE TORUŃSKA SZKOŁA WYŻSZA
VOL. 1: 5–15

DOI: 10.2478/lape-2014-0001

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Constitutional changes in Poland between 1989 and 1997

Key words: Constitution of Poland, Poland 1988–1997, „Solidarność”

1. Introduction

Between 1987 and 1988 the communist elite in Poland that held the power had become aware of the fact that the significant changes in both system and economic model were necessary. It resulted from the influence of both external factors, i.e. the general dismantling of the system and paralysis of the Soviet state, as well as the internal ones, such as the growing threat of economic disaster¹. The growing social resistance and gradual self-

-organization of the society² made the pretended changes, like the ones made in 1956 and 1970, pointless. It was obvious that the next change of the party and state leaders, introducing another „reform”, or the policy of „further improvement” of socialist system would be no more than indifferent for the society.

Therefore, the Warsaw regime decided, after the initial agreement with the group of the „Solidarność” leaders at the break of 1988 and 1989³ to make significant

¹ It is necessary to point out, that apart from the well known weaknesses of the Soviet model of economy, it was the complete inability to cope with the competition resulting from the technological revolution of the 1980s that contributed to the economic disaster of the PRL. While during so called Gierek era the technological distance between Polish and the world economy wasn't that big, the rapid development of new technologies (especially IT) caused that in relatively short time there appeared an abyss between the two of them. Evidently, it was the effect of marshal law and the shut off as the result of the policy of Jaruzelski's team from the access to technology. At the end of the 1980s Polish economy could be perceived as a sort of a museum of completely different times.

² When still in 1987 organized structures of the opposition, mainly „Solidarność”, were very weak, in 1988 (after the second pilgrimage of John Paul II during „war” period) the real „explosion” had place. Not only the structures of „Solidarność” started to be rebuilt intensely, including some attempts to make it legal, or other social organizations, but also even legal political organizations. This was the form adopted by political clubs, and what is more historical political parties undertook their activities officially (Polska Partia Socjalistyczna or Stronnictwo Pracy), and Konfederacja Polski Niepodległej had *de facto* abandoned the underground existence.

³ At the break of 1988 and 1989 in Magdalenka (the conference centre of security authorities) the minister of internal affairs Czesław Kiszczak started secret negotiations with Lech Wałęsa and a group of his co-workers on behalf of the communist authorities. It was during these talks that the preliminary conditions of the agreement between the au-

concessions. The leadership of PZPR accepted the fact that it was necessary to share some power with the group of opposition. The communist authorities hoped to hold full control in the key areas of the state, such as foreign affairs, army, secret services, strategic areas of economy. Whereas in other areas the selected groups of the opposition were to be in charge. In this way the regime intended to acquire legitimization to implement deep reforms in economy, which were to be also the responsibility of solidarity opposition⁴.

2. The Round Table Agreement and the first free elections

In such circumstances in the spring of 1989 a breakthrough event took place, the negotiations of so called round table began, in which representatives of part of the opposition took part. They were organized in so called Citizens' Committee at the side of the leader of „Solidarność” Lech Wałęsa. What was important was the fact that the negotiations, in which the shape of the system transformation was being decided on, were broadcast by mass media, at that time monopolized by the regime.

The character of both simultaneous negotiation processes is still a matter of discussion, especially the content of restricted decisions made in Magdalenka⁵. Anyway, after two months the initial draft of the project concerning the system reestablishment of the state was agreed on, and the changes in the Constitution were to be a significant element of the project.

thorities and the oppositions had been agreed on. The meetings were continued also during the period of negotiations of „the round table”.

⁴ More on it at: A. Dudek, *Pierwsze lata III Rzeczypospolitej 1989–1995. Zarys historii politycznej Polski*, Kraków 1997.

⁵ It should be added that representatives of the Catholic clergy were important participants of the negotiations in Magdalenka. They were pretty reserved about the official meeting at the „round table”. The discussion concerning the character of the decisions made in Magdalenka results from the fact that all the participants, despite the apparent logics of the events, are still very secretive about the course of the negotiations, and the decisions made there, and are trying to reduce their sense to meaningless social meetings. Such an attitude leaves the space for interpretations, which actually prove that the restricted decisions of Magdalenka had determined in fact the whole political and economic life in Poland till the end of A. Kwaśniewski's presidency. More on this at A. Dudek, *loc. cit.*

The changes were passed on the parliament assembly on 7th April 1989⁶. They meant actually the dismantling of the former system model of the state. In the new regulations of the constitution the new, reestablished institutions could be found, i.e. the President of PRL and Senate of PRL. The president of PRL was to be appointed in indirect elections. To appoint him both chambers (Sejm and Senat) were to make up Zgromadzenie Narodowe (the National Assembly). The reestablishment of the presidency meant the decommissioning of the Council of the State. The regulations concerning the foundations of election rights were to be changed, and developed in the democratic directions in the new electoral regulations to Sejm and Senat. The post of the Ombudsman, existing previously, got the rank of the constitutional institution.

Moreover, the resolutions concerning constitutional guarantees of the independence of judiciary system and judges were introduced, and a new organ was established Krajowa Rada Sądownictwa (the State Council of Judiciary), which was to overtake a significant range of entitlements in the process of appointing judges. New solutions were to guarantee the independence of the appointing of judges from the influence of the communist party.

Apart from the already described system changes, the most important decision of the „round table” were to be parliamentary elections. They were supposed to be free, however not fully democratic. Only the elections to the new chamber, Senat, were to be fully free. However, this chamber wasn't important enough to decide on the new character of PRL. It was Sejm that was to preserve the basic role and functions (the burden of legislation, as well as the exclusive influence on appointing and controlling the work of the government). The agreement was made, as a result of political contract, that the elections would be of curial character. In consequence, the existing authorities were to keep 65% seats in the parliament, while the opposition 35%. 60% of seats kept by the authorities were to be divided between the communist party PZPR and its satellites, whereas the remaining 5% were to be held by catholic organizations (PAX, Chrześcijańskie Stowarzyszenie Społeczne, Polski Związek Katolicko-Społeczny) Within electoral

⁶ The act of 7 April 1989 on changing the Constitution of the Polish People's Republic, J.L. of 1989 No.19 item 101 (Ustawa z dnia 7 kwietnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej, Dz. U. z 1989 r. Nr 19, poz. 101).

regulations, which constituted single-member districts for the elections, the seats were divided in such a way that it was known in advance how many seats each party would acquire.

Making the decision on free elections, which meant the realization of the decisions of Yalta after 44 years, the communist authorities counted on preserving the existing balance of power. Curial electoral regulations was to guarantee their advantage. Moreover, the authorities counted on two favorable elements. The elections were to be held shortly after the negotiations of the „round table”, less than two months. It was thought that the opposition wouldn't have enough time to organize for the elections. What is more, the authorities preserved its dominant role in mass media, which was to guarantee their advantage. Finally, the authorities „delegated” a lot of relatively known people as independent candidates, who were supposed to take over seats from the opposition part of 35%. The elections were, thus, a part of plan to involve a part of opposition to take responsibility for unpopular economic reforms, while the foundations of the system were to stay unchanged, as the range of constitutional changes proved⁷.

The elections, which took place on 4th June 1989, put an end to the plans of the communist regime. In the elections to Senat, which might have been less important as a matter of fact, yet were of symbolic significance, the opposition acquired 99 out of 100 seats. This clearly proved the complete defeat of the authorities.

Yet, their defeat was also visible in the elections to Sejm. In oppositional curia, the candidates supported by „Solidarność” won in the first⁸ round of the elections in almost all constituencies. Whereas almost all the candidates of the regime curia had to take part in the second round. Thanks to that the opposition got the opportunity to support in the second round those representatives of the authorities, who were declaring the themselves not so attached to the management of their own parties⁹.

⁷ Among the constitutional changes from April 1989 only two significantly breach the system principles, i.e. approving both the independence of judges and the independence of judiciary system, and acknowledgement that the elections were to be free and democratic.

⁸ The electoral regulations provided for the second round if the candidate didn't acquire absolute majority in the first one.

⁹ Thanks to the support of the local structures of „Solidarność” in the second round over 50 MPs of authorities curia acquired seats *de facto* against the will of the management of their parties.

However, it was the collapse of so called „country list” that was the final stroke¹⁰. Additionally, there appeared a difficult legal problem, since such a situation wasn't taken into consideration in electoral regulations, and Sejm couldn't start working without the constitutional composition of 460 MPs.

It was the first situation in which the round table order was under a significant test of sustainability. However, it was also the test for the opposition. After the first shock after the defeat in the elections had passed, the authorities started to blackmail the opposition. They pointed out that the lack of its agreement on so called constructive solution of the country list crisis would mean abandoning the previous political arrangement.

Facing the unexpected social support (as well as expectations and trust) on the one hand, and the brutal regime, which in December 1981 proved capable of disgracefully violent solutions on the other, the leaders of the opposition, agreed on such a change of electoral regulations which would allow the authorities save their seats. Appropriate decisions were passed by Rada Państwa in emergency procedure which additionally irritated the society well remembering the decrees of this body from 13th December 1981. It was an unusual precedence, since the electoral procedure was changed during the elections in progress.

Thus, both the authorities and Solidarność opposition gave away their attitudes towards the law, as a tool serving to achieve particular interests. This common standpoint has been the dominating one not only for the political elites but also legal circles for the next years.

Sejm and Senat emerged in such elections were to appoint the president of PRL. General W. Jaruzelski was an obvious and actually the only candidate for this post. The new office was supposed to be a kind of a guarantee of immutability of basic elements of the balance of powers in the state. Therefore, this appointment was of fundamental meaning for the authorities.

It turned out, however, that the authorities might not have enough votes in Zgromadzenie Narodowe to make the appointment effectively. It happened because some group of MPs elected in the authorities curia, but supported by „Solidarność”, wouldn't vote for general Jaruzelski.

¹⁰ According to electoral regulations the country list of 33 candidates, the members of the management of regime parties, was voted separately. However, to get a seat the people from the list also had to acquire the absolute majority of votes. Only two people from the list got seats.

The appointment of the President was to be the second, in the short time, serious test for the opposition. Many members of the opposition pointed out that in such a situation the communist authorities should be made to choose another candidate, and clearly show the society that serious, and not superficial, changes were to be performed.

Yet, again the leaders of *Solidarność* gave way. In dramatic circumstance, just by one vote, general Jaruzelski was elected the President of PRL. It happened because a group of the opposition MPs didn't take part in voting and decreased quorum.

The election of general Jaruzelski, and especially the circumstances in which it took place, were a serious stroke for the society believing in possibility of real changes. It considerably lowered the credibility of the opposition, whose actions were perceived as procrastinating, despite the visible power of the social support.

Yet, there was the third confrontation to come. General Jaruzelski, most probably fulfilling the previous agreement with the opposition, appointed general Czesław Kiszczak for the post of the Prime Minister. Kiszczak used to be the head of the secret services, which played the key part preparing the agreement with the opposition.

This time, the opposition, fearing the ultimate loss of its credibility among the society, openly questioned this candidate. Nevertheless, general Kiszczak made some attempt to form the government, even inviting the opposition members to join it.

In such a situation, part of the parliamentary management of *„Solidarność”*¹¹ forwarded the initiative to force through a member of the opposition for the post of Prime Minister. The idea was reflected in the text that appeared in the oppositional newspaper *„Gazeta Wyborcza”* by its editor-in-chief Adam Michnik titled *„Your President, our Prime Minister”*. Michnik and the politicians around him, however, wanted this *„our Prime Minister”* to be supported by the authorities, especially the management of PZPR.

Many politicians associated with Lech Wałęsa didn't agree with this concept. They managed to convince the leader of *„Solidarność”* that the only way of sustaining the social trust was by proving that the opposition really desired to influence the functioning of the state.

Therefore, authorized by L. Wałęsa actions were taken to set up a political background for the new government beyond PZPR. Jarosław Kaczyński undertook the

realization of this task, and quickly managed to build up a surprising coalition between *„Solidarność”*, ZSL, and SD. The votes of these three organizations provided the necessary majority to appoint the government, whose Prime Minister was to be pointed to by L. Wałęsa.

L. Wałęsa pointed to Tadeusz Mazowiecki, who approved by Sejm took over the office on 12 September 1989. Although, the key positions were held in the government by the closest coworkers of general Jaruzelski¹², it seemed that the government managed by the first non-communist Prime Minister would quickly make deep system transformations. Great hopes of the society for the breakthrough weren't disturbed even by the declared by the Prime Minister will of cutting off the past with the *„thick line”*, which was perceived as the lack of willingness to come to terms with the communist crimes of the past.

The *„round table”* and June elections, as well as the taking over the office by T. Mazowiecki, attracted the attention of the whole world, which was surprised to see the peaceful dismantling of communism in Poland. Which was even more puzzling, since on the day of Polish elections the communist authorities of China ordered the massacre of rebellious students at the Tienanmen Square.

However, it was just after a few weeks of co-governing of the opposition and communists that the situation in the Middle-East Europe had completely changed. As a result of so called autumn of nations, the regimes in Hungary, Czechoslovakia, Bulgaria, and East Germany collapsed, as well as in Romania, but there it was after bloody struggle. Under the pressure of the societies, the opposition organizations got the power, after free and democratic elections. Moreover, new constitutions were being quickly passed as the symbol of the pursuit to break any ties with the communist past as soon as possible.

At the end of 1989 instead of being the pioneer of the transformation, Poland had become their outsider. Undemocratic curial Sejm, the old constitution from the times of Stalin and the government including communist generals, were surprising from the outside observers, and irritate the Polish society. What is more, Poland was still, even when it comes to its name, PRL.

¹¹ It was so called Obywatelski Klub Parlamentarny.

¹² E.g. general Kiszczak became the minister of internal affairs, and general F. Siwicki the minister of defense.

3. The Constitution changes

It was in such atmosphere that the last change of the July Constitution took place. On 29th December 1989¹³ Sejm reestablished the traditional name of the state, Rzeczpospolita Polska (the Republic of Poland) and the Polish symbol, the white eagle, was given back its gold crown. More important, however, was removing from the Constitution its preamble and stating in the new version of art. 1 that Rzeczpospolita is, „a democratic state of law realizing the rules of social justice „The following, art. 2 of the Constitution stated that, „the highest authority belongs to the nation”, while the next ones guaranteed political plurality and economic freedom.

The above mentioned changes in the Constitution meant rejecting the concept of a socialist state and the previous system model of PRL was becoming the thing of the past. The III Rzeczpospolita was born.

Yet, III RP was emerging as the legal continuation of PRL. This legal heritage resulted from the fact that III RP was to function basing on however modernized, but still valid Constitution of 1952. When on 29th December 1989 Sejm initiated amendments of the Constitution, in no way did it refer to the legal continuity of III RP with II RP. On the contrary, the fact of unbroken existence of II RP reflected by the institutions of the President and the government as well as Rada Narodowa (the National Council) in London, had been entirely ignored

Therefore, in my opinion the statement that, „III Rzeczpospolita is the continuation of II Rzeczpospolita preserving the identity and continuity of the state being”¹⁴ is completely unsubstantiated.

The changes introduced at the end of 1989 in the July Constitution, however going in the right direction, didn't solve the basic system questions of the Polish state. The existing solutions resulted in the functioning of the hybrid model, in which the attempts were being made to join the inviolability of system and legal continuity of PRL with the establishing of the foundations of a democratic state of law. In reality, such a situation could in no way be successful.

Moreover, the above mentioned role of Poland as a pioneer in overthrowing communism, had already been the thing of the past at the beginning of 1990. During this time virtually almost all of the countries of the former Soviet block, had already had the parliaments emerged in fully democratic elections, as well as new constitutions, breaking up completely with the communist past. Additionally, some activities of T. Mazowiecki's government concerning international matters brought about anxiety. The government was incompetent in issues concerning the reunion of Germany, strongly supported the idea of not only preserving the Warsaw Pact, but also remaining the Soviet army on Polish territory, and was against the dismantling of Conecom. When in the middle of 1990 the negative consequences of the deep economic transformations of the vice Prime Minister L. Balcerowicz began to accumulate, the situation got ripe for the deep political crisis.

Then the project to enact the new Constitution quickly had appeared, which was withheld by the opinions that undemocratic Sejm had no moral right to pass the Basic Law. Therefore, the works on the project were focused in Senat. This chamber, in which the constitutional commission was led by Senator Alicja Grześkowiak, in less than a year passed the most coherent and referring to Polish traditions project of the Constitution, when compared to the ones presented in the 1990s.

However, it was the initiative of a change in the post of the president, that had been an attempt to solve the growing tensions. To make it successful, a determined political campaign was necessary, which was initiated by L. Wałęsa and the people around him.

Again, the leadership in this enterprise was taken by J. Kaczyński, who also began establishing the political background of Wałęsa's camp, i.e. Porozumienie Centrum (PC).

Extremely strong political pressure caused that general Jaruzelski accepted the need of dismissal. At the same time as a result of changes in the Constitution¹⁵ it was agreed that the new president would be elected in general elections, and not by Zgromadzenie Narodowe.

The new way of election was to provide the president with a much stronger legitimacy, however it wasn't followed by the changes in the Constitution,

¹³ The act of 27 September 1990 on changing the Constitution of the Polish People's Republic, J.L. of 1990 No.67 item 397 (Ustawa z dnia 29 grudnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej, Dz. U. z 1990 r. Nr 67, poz. 397).

¹⁴ M. Kallas, A. Lityński, *Historia ustroju i prawa Polski Ludowej*, s. 195.

¹⁵ The act of 29 December 1989 on changing the Constitution of the Polish People's Republic, J.L. of 1989 No.75 item 444 (Ustawa z dnia 29 grudnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej, Dz. U. z 1989 r. Nr 75, poz. 444).

which would reflect the fundamental modernization of the system. Soon it was to be the cause of numerous conflicts, yet the state has practically survived till the current regulations.

4. Presidential elections of 1990

The presidential elections of 1990 were the first fully free and democratic ones in Poland after 1939¹⁶. Eventually, L. Wałęsa defeated in the second round S. Tymiński, who in the first round had eliminated unexpectedly T. Mazowiecki¹⁷ running for the post of the Prime minister.

The President elect took the office on 23rd December 1990. Before it happened, as I have mentioned in chapter seven, on the same day L. Wałęsa received the symbols of II RP from the President in Exile, Ryszard Kaczorowski. In this way the work of the authorities of RP based on the regulations of the April Constitution ended, and so did the duality of the highest authorities of the Polish state.

Taking the office by Wałęsa started the long lasting period of arguments over the position of the president in the constitutional system of the state organs, especially his relations with the parliament and the government. The existing regulations, the amendments to which were introduced in the spring of 1989 the July Constitution, didn't correspond to the completely new political situation, and abstracted from the fact that the president was appointed in the general elections. Such a strong legitimacy had undoubtedly given the ones in the office the grounds for serious demands (no matter who they might have been), to acquire real competences to rule the state. The existing constitutional regulations, however, had seriously limited these rights.

¹⁶ It should be mentioned that in the spring of 1990 the elections were held at the local administration level (wybory gminne). They were obviously fully free and democratic, and played a great part in the process of the state transformation, however their significance could in no way be compared with the presidential or parliamentary elections.

¹⁷ T. Mazowiecki as the Prime Minister in the office had strong social support, but due to disastrous campaign got the image of the one disloyal to L. Wałęsa. Because of this and overzealous exposing in his campaign of L. Balcerowicz and his „successes”, in the last phase of the campaign before the first round he was outrun by an unknown Polish emigrant from Canada, Stanisław Tymiński. The other candidates, W. Cimoszewicz from SLD, R. Bartoszcze from PSL, and L. Moczulski didn't really count.

The quick introduction of free and democratic elections to both chambers of the parliament was to be the initial point to change this situation. However, to a great surprise of the observers, president Wałęsa didn't make any attempts to dissolve Sejm ridiculing Poland at that time. On the contrary, checkmating in a way Sejm with such a possibility¹⁸, forced through supported by himself government of Jan K. Bielecki, which was a submissive tool of fulfilling the president's political goals.

The existence of this setup was putting off the real work on the constitution. Only the gradually deteriorating social situation which was the consequence of the results of economic reforms and the crisis in the state budget¹⁹, as well as unpredictable consequences of the attempts made in Moscow to reestablish the old Soviet model, and next the destruction of the Soviet Union, made the president to initiate the dissolving of the parliament.

In October 1991 the first fully free and democratic elections to both chambers of the parliament took place. However, instead of helping to stabilize the political situation in the country and emerging the effective government, they initiated the period of the biggest destabilization of the political stage in Poland. It was the result of passed electoral regulations to Sejm, which were of extremely proportional character.

In consequence, a fragmented Sejm emerged, including at first ten clubs, yet at the end of the cadency in 1993 there were over twenty. The strongest one of Unia Demokratyczna²⁰ had just 62 members.

¹⁸ It is worth remembering that the strongly represented in Sejm parties of the former authorities (overall still 60%) – PZPR (and later on the parties that were established on its foundations SdRP, and Polska Unia Socjaldemokratyczna), ZSL (transformed in PSL) and SD, being aware that in regular elections they had no chance to get even the part of representation they had, strongly opposed the shortening of the cadency.

¹⁹ It should be reminded that during 1991 the negative effects of the work of Bielecki's government, in which L. Balcerowicz was still in charge of reforms, had deepened. The economic recession was growing, and so was the unemployment, stimulated by the inappropriate social policy started by the minister of labour in Mazowiecki's government, J. Kuroń. In addition, there were plenty of economic scandals, presented as the necessary element of so called system transformation. The financial consequences of these (and many other) factors were tragic. At the end of 1991 the minister of finance, L. Balcerowicz, wasn't even able to assess the deficit of the state budget.

²⁰ A party set up by the followers of T. Mazowiecki.

Such a shape of electoral regulations, and as a result of Sejm, was the effect of president Wałęsa's aspirations, who was to be the arbiter deciding on everything in the situation of such fragmented political scene. It was also to provide the president with the decisive influence on the process of forming of the government (which according to the Constitution he didn't actually have), as well as its functioning.

In fact, however, as the result of yet another political initiative of the leader of Porozumienie Centrum (PC) J. Kaczyński, a coalition emerged in Sejm, which managed, practically against the president's will, to force through the government of Jan Olszewski.

The half year long period of the functioning of this cabinet was full of tensions and arguments with both the president and Sejm²¹. Eventually at night 4th/5th June 1992 the government of Jan Olszewski was overthrown by use of emergency procedure²².

W. Pawlak from PSL designed to the post of the Prime Minister wasn't able to form the government that could get the trust of the majority in the parliament, though. Therefore, the majority formed in Sejm, with Unia Demokratyczna and ZChN as its core, which with the support of the president had emerged the government with Hanna Suchocka from UD as its leader. Again, it was Wałęsa's attitude that was the key factor, and it was he, who by peculiar interpretation of the constitutional regulations²³, created the practice heading clearly towards the increase of his government's competences.

Nevertheless, almost permanent political crisis under the rule of the July Constitution, had induced the political elites to make some attempts to modernize the existing regulations. During the work on amendments,

the concept of accepting the constitutional bill appeared, which would establish the relations between the most significant organs of the state, i.e. the President, Sejm, and the Government.

5. Small Constitution of 1992 and forming the government

This led to passing on 17th October 1992 a regulation²⁴ which according to the Polish tradition was called Small Constitution. The new solution overruling the validity of this regulations of the July Constitution, which established the status and functioning of the legislative and executive, as well as the relations between them. The main intention of the creators of this model, was to record the procedures concerning the formation of the government and its relations with both the President and Sejm, more clearly. The main idea behind it was to reestablish the tripartite system, as well as the balance between them.

However, in reality Small Constitution was a step towards the increase of the president's influence on the government, and in addition strengthening the executive in relation to Sejm. It was reflected in at least three kinds of solutions.

The procedure of forming the government, anyway meant to consist of five subsequent phases, gave clear advantage of the president's initiative and the tools to force through his will. The right to dissolve the parliament if it didn't eventually provide the president's candidate with trust, was an ultimate argument.

The president also acquired the right to dissolve the parliament, if Sejm expressed motion of no confidence to the government (the establishing of a new government was an alternative).

Finally, appointing and removing ministers depended on the president's decision, after the motion of the Prime Minister. It should be mentioned, that in case of the ministers of foreign affairs, internal affairs, and national defense, the new regulation forced the Prime Minister to ask for opinion before he presented

²¹ The government was supported in Sejm by an informal coalition of PC, ZChN, Porozumienie Ludowe, PSL, and groups of some smaller clubs which all in all guaranteed around 170 votes. Additionally, KPN with around 50 MPs was in favor of the government, which provided it with about the half of votes in Sejm, yet made it constantly seek the support of each of the political group.

²² The night voting on the presidents motion to remove the government by emergency procedures was full of the breaches of statutory procedures. However, the *ad hoc* coalition hostile to the government, established as a result of the execution of the lustration resolution by Sejm, forced its will ignoring this.

²³ The special role was played here by the minister of the President's Office, Lech Falandysz, discovering all the time new interpretation formulas for the general regulations of the Constitution. This kind activity was named by journalists „falandyzacja of law”. Yet, from the president's perspective it was the creation of favorable constitutional practice.

²⁴ Constitutional act of 17 September 1992 on mutual relations between the legislature and the executive of the Republic of Poland and on territorial self-government, J.L. of 1992 No.84 item 426 (Ustawa Konstytucyjna z dnia 17 października 1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym, Dz. U. z 1992 r. Nr 84 poz. 426).

a candidate. In practice, the president's office imposed the rule according to which the president „suggested” appointing his candidates for these posts.

Such a model of relations was strengthened in president's favor when Sejm was politically fragmented. However, as it later turned out, president Wałęsa was applying the broadening interpretation of Small Constitution also toward Sejm consisting of different groups.

In May 1993 Sejm passed motion of no confidence towards the government of H. Suchocka, and president Wałęsa decided that it was necessary to dissolve the parliament. The following elections took place in September 1993 under the rule of a completely changed electoral regulations. The election threshold (5% of votes in the whole of the country) was a fundamental novelty, as well as such a method of counting votes (d'Hont's) which was clearly in favor of the strongest parties.

This project was forced through by President Wałęsa, who counted on the success of Bezpartyjny Blok Wspierania Reform (BBWR), which he was the patron of. However, this organization had barely passed the election threshold, which was a great defeat of Wałęsa's. What is more, although the centre-right groups taking part in the elections got 46% of votes altogether, only the two of them, the above mentioned BBWR and KPN, had also barely passed the threshold. The others didn't enter the parliament.

On the other hand, the triumphant SLD and PSL thanks to that had almost doubled the number of seats in relation to the received votes²⁵. The coalition of SLD-PSL formed in effect of the elections didn't, however, appoint the leader of SLD, Aleksander Kwaśniewski, as its candidate for the post of the Prime Minister. As a result L. Wałęsa's initiative, W. Pawlak from PSL for the second time got the mission to form the cabinet. Thanks to this President Wałęsa acquired significant influence on the shape of his cabinet, especially so called presidential departments. A similar practice formed after the next political crisis, when the SLD-PSL coalition pointed J. Oleksy from SLD in place of W. Pawlak. In this case, as well, the coalition partners despite a significant power in Sejm, didn't risk the confrontation with the president in the issue of manning „president's departments”.

The situation was to change while A. Kwasniewski became the president. It happened at the time when the cabinet of J. Oleksy was dismissed²⁶, the coalition chose Włodzimierz Cimoszewicz in his place. Then, A. Kwaśniewski declared that in his view constitutional regulations didn't give the right to impose the candidates to resorty prez on the Prime Minister²⁷ and by doing this he ended up the practice of L. Wałęsa. By the time the new Constitution started to work, the issue hadn't been the matter of debates or arguments.

6. President's elections of 1995

It is necessary now to return to the problem of the president's elections in 1995, especially the precedent decision of the Supreme Court referring to their validity.

In the second tour of the elections L. Wałęsa and A. Kwaśniewski were the opponents. In dramatic circumstances, the latter one had won by just around 600 thousand votes. Soon afterwards, however, the Supreme Court received almost 600 thousands complaints from citizens. The basis of the protests was an accusation that A. Kwaśniewski had lied saying that he had graduated from university. It was an important thing, since for many voters the fact that one of the candidates was better educated than the other was a decisive factor in voting.

On 5th December 1995, however, the Supreme Court decided that the result of the elections was valid. The Court pointed out that even though the candidate had blatantly lied presenting the untrue information on his education, which meant breaking the law, „it wasn't recognized that the stated breach of electoral regulations had calculable and proven influence on the outcome of the elections”²⁸.

²⁶ Just before passing the president's office the minister of internal affairs in Oleksy's cabinet, A. Milczanowski, who was nominated from Wałęsa's initiative, accused the Prime Minister of having been (and still being) the spy of KGB. In the tense atmosphere Oleksy forwarded his dismissal, but it was after Kwaśniewski had taken over the office.

²⁷ It was just a tactical move, since the prime minister and the president, as well as their political background agreed on the candidates. The case was, however, used as a symbolic cutting off the style presented by the former president.

²⁸ The resolution of the whole of Administrative, Labour and Social Security Chambers of the Supreme Court from 5th December 1995.

²⁵ The support at the level of 43% meant almost 80% of seats in Sejm. It was followed by an overwhelming dominance of SLD and PSL in Senat (altogether 73 seats).

In conclusion the Court stated that its resolution: „is merely stating the lack of basis resulting in questioning the validity of the elections. It is beyond the competence of the Supreme Court to assess the personal virtues as well as morality of the individual elected for the post of the President.”

This legal judgment wasn't shared by a considerable part of the Chamber, which showed in the unprecedented number of separate votes. However, there is no place here to analyze it in detail²⁹. What is important, however, is the fact that the Supreme Court by its resolution accepted the situation when the highest office of the state, established to „watch over the realization of the Polish Constitution” (art. 28 ust. 1 of the Small Constitution), was held by a person who fighting for the post had intentionally broken this law. The Court had released itself from the moral judgment.

The decision of the Supreme Court had shown that in III RP, law perceived in particular way was an entirely relative phenomenon, and might be a tool used to realize different aims, without the need to obey any rules, and the people perceiving the law in such a way could get the protection from the highest judiciary organ of the state. The decision of the Supreme Court had thus made a very deep erosion of the Polish legal system permanent, and made the rules of a democratic state of law a meaningless cliché.

7. Conclusions

Small Constitution passed on 17th October 1992, was to put in order Polish constitutional system before the new Constitution was enacted, which was believed to happen very quickly. However, Sejm that emerged in the elections in 1991 hadn't managed to make any progress in its work on the regulations by the time it was dissolved in May 1993.

Sejm elected in the autumn of 1993 took more decisive steps towards the preparation of the new Basic Law, which was conditioned politically. A. Kwaśniewski became the head of the Constitutional Commission. Since due to the opposition of L. Wałęsa he didn't manage to take the post of the Prime Minister, his participation

in preparation works for the new Constitution was to be a significant part in his presidential campaign. However, when at the break of 1994 and 1995 the confrontation before the elections was visibly more intense the work of the Commission led by A. Kwaśniewski had practically become non-existent. After he had taken over the president's office, there was little hope that the work would get more intense, and Sejm of II term would be capable of preparing and passing the new constitution³⁰.

However, in the mid 1996 the situation had significantly changed. To comprehend it, the results of 1993 elections and how they were reflected in Sejm should be reminded.

As I have already mentioned, the centre-right parties got altogether 45% of votes in the elections³¹. The left wing, i.e. SLD, Unia Pracy and PSL, got together around 43% of votes³², whereas Unia Demokratyczna got the support of around 11% of the voters. Taking into consideration that only two of centre-right parties had passed the PROG, BBWR and KPN, distribution of seats in Sejm in no way reflected the actual distribution of votes. Thus, centre-right parties had no more than 10% of seats, the left wing 75%, and UD about 15% of seats.

In the meantime, in the half of 1996, the centre-right groups consolidated around Akcja Wyborcza Solidarność (AWS) and Ruch Odbudowy Polski (ROP), managed to get a significant social support. It started to be obvious in the elections which were to take place in the autumn of 1997, not only would they acquire a big representation in the parliament, but also would probably win the elections.

What is more, the consolidation of the right wing was based on the ground of so called Obywatelski Projekt Konstytucji (the Citizen's Project of the Constitution) which was being prepared under the patronage of the trade unions „Solidarność”. Such a project, based on citizens's initiative, was possible according to the constitutional bill on the procedure of preparation and enactment of the Constitution of Poland from April

²⁹ The broader analysis of the issue is presented in the text: G. Górski, *Kryzysy wyborcze w Polsce i w Stanach Zjednoczonych a rola Sądu Najwyższego*, (in:) *Hominum causa omne ius constitutum est. Księga Jubileuszowa ku czci Profesora Alicji Grześkowiak*, A. Dębiński, M. Gałązka, R.G. Hałas, K. Wiak (red.), Lublin 2006.

³⁰ Appointing a non-important member of SLD on the position of the head of the Constitutional Commission proves that neither SLD nor A. Kwaśniewski was interested in the positive outcome of constitutional work.

³¹ Apart from BBWR and KPN, only „Ojczyzna” associated closely with the government ZChN acquired 5%. However, since the election threshold for coalitions was at the level of 8% it didn't enter Sejm.

³² SLD acquired 20.4%, PSL 15.4%, and UP 7.3%.

1992³³. The project had to be supported by at least half a million of citizens, however this one acquired the support of a million and a half.

It was a significant signal for A. Kwaśniewski and the left wing. It meant, that if the current parliament didn't manage to enact constitution, it would be necessary to negotiate compromise with the centre-right parties in the following Sejm. Since there weren't any significant ideological differences between SLD, PSL and UP, it was possible to force through their own constitutional ideas basing on the votes of these parties in both Sejm and Senat.

The management of SLD and president Kwaśniewski, however, wanted to avoid the opinion that such a constitution was created only by the consolidated post-communist left wing³⁴.

Therefore, many concessions were made in order to involve Unia Wolności³⁵, and to make its leader T. Mazowiecki, the first non-communist prime minister in PRL, one of the symbolic creators of this document. On the one hand, it was to be the proof that the new constitution was supported by part of „Solidarność” block, on the other to make impression that the whole of Sejm, i.e. the representation of the nation, with just the exception of insignificant margin (no more than 10% votes), would enact the Basic Law.

Getting UW was significant since the new Constitution had to acquire support in the constitutional referendum. The possibility to include this party in the pro-constitution block in the referendum campaign was to neutralize the increase of support for the centre-right wing, opposing the new regulations.

In the spring of 1997 the works of Constitutional Commission got the record pace. The constitutional coalition was overcoming yet another discrepancy, aiming at any price at organizing the referendum in

May 1997. It was not only about, voting before the visit of John Paul II. The left wing wanted to have a guarantee that the new constitution would start to be valid before the new parliament constituted itself. They feared that the centre-right wing would do everything to make the validity of such a solution impossible.

Thus, in the atmosphere of a kind of „constitutional coup” the left wing parties, which in the elections of 1993 acquired only 58% of the social support, with the attendance below 50%, forced through in the parliament a plan imposing the new constitution. On this basis on 27th May 1997 the constitutional referendum took place. Only 42.86 % of voters took place in it. Despite, an enormous propaganda pressure from the constitutional coalition, the result came as a shock for them. There were only 52.7% votes „for” the constitution (which meant merely half a million more than against it), although they expected a much higher result³⁶.

There also appeared a legal controversy around the referendum. The existing constitution didn't mention the participation of at least 50% of voters as the condition of validity of the referendum. Such a demand was the result of the bill on referendum passed in 1995³⁷. However, the interpreters of law at that time decided that the regulation of the bill was so called *lex specialis* in reference to the ordinary bill³⁸. Thus the validity of the referendum wasn't discredited.

As a result of the referendum the final version of the new regulation was accepted by Zgromadzenie Narodowe, dominated by the left wing constitutional coalition. On 17th September 1997 it was signed by the President, A. Kwaśniewski, and a month later it entered into force. It took place on 17th October 1997, two days before the session of the newly elected parliament.

The winning AWS, just after the constitutional referendum and during its campaign, was determined to introduce significant alterations in this document that had been passed in controversial way. However, after the elections no real actions were taken.

³³ Constitutional act of 23 April 1992 on the procedure of preparing and enacting of the Constitution of the Republic of Poland, J.L. of 1992 No. 67 item 336 (Ustawa Konstytucyjna z dnia 23 kwietnia 1992 r. o trybie przygotowania i uchwalenia Konstytucji Rzeczypospolitej Polskiej, Dz. U. z 1992 r. Nr 67 poz. 336).

³⁴ SLD along with its coalition partner PSL were identified with the pre-June PZPR and ZSL. On the other hand, UP although consisting of the left-wing activists of „Solidarność”, was actually dominated by former members of PZPR.

³⁵ Unia Wolności emerged as a result of merging Unia Demokratyczna and Kongres Liberalno-Demokratyczny of the former prime minister Bielecki, after this party had been defeated in the elections of 1993.

³⁶ The pro-constitution block was convinced that the proportion of the referendum would be at least 3:1.

³⁷ The act of 29 June 1995 on referendum, J.L. 1995 No. 99 item 487 (Ustawa z dnia 29 czerwca 1995 r. o referendum, Dz. U. z 1995 r. Nr 99, poz. 487).

³⁸ It was so, although in the article 1 of the act of 1995 it was clearly stated that this document regulates the rules and procedure also concerning the referendum mentioned in the constitutional act of 1992. Assuming that this regulation was *lex specialis* required a lot of courage.

On the one hand it resulted from the fact that Unia Wolności, one of the main creators of the constitution, had become the coalition partner of AWS in the new government. What is more important, however, beneficial for AWS system regulations, providing prime minister and a government with a large independence, and a wide range of activities, even without the support of majority in the parliament, made the attitude of this party towards the constitution very relative. Hence, no changes of the Constitution were even discussed, and this situation lasted in that and the next parliamentary term between 2001 and 2005.

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