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Model of election of the head of state of the Third Polish Republic : balancing between institutional coherence and political pragmatism

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**MODEL OF ELECTION OF THE HEAD OF STATE
OF THE THIRD POLISH REPUBLIC – BALANCING
BETWEEN INSTITUTIONAL COHERENCE
AND POLITICAL PRAGMATISM**

Abstract:

Poland held its first ever popular presidential election at the end of 1990. Since then four such elections have been held i.e. in 1995, 2000, 2005 and 2010. In the meantime the position of the president gradually evolved hence giving rise to the question about which method for the election of the head of state is most “appropriate”. However, this issue was not an object of political deliberation for the major Polish political parties of the last 20 years. Firstly, this resulted from the popularity of the presidential election within society, which was reflected in high turnouts (considering Polish reality). Secondly, especially until the enactment of the Constitution of the Republic of Poland of 2 April 1997, no party wanted to run the risk of being accused of returning to the political transition solutions adopted at the Round Table. Thirdly, until the beginning of 2010, the competition for the office of president was “reserved” for charismatic leaders or party leaders. It was finally Donald Tusk, who decided not to contend for the presidential election of 2010 thus wanting to change the perception of the institution of president in the system of power and draw attention and emphasize the role and the importance of a government with a strong (normatively and factually) prime minister as the leader.

Key words:

model of election of the head of state, the position of the president. Third Polish Republic

Method of election of a republican head of state as a theoretical issue

The restoration in 1989 of the institution of president into the political system of the state can be considered as one of the most important events ending the period of real socialism in Poland. Considering that the Communist Party was the main advocate of the restitution of the president as head of state, we can conclude that history's wheel has come full circle. In this way, the heirs of the founders of the political system of the People's Republic of Poland negated one of the key principles which the system was based on, namely that of collegiality. This fact was reflected in the removal by the system in 1952 of the single head of state in place of a collegial body - the State Council. At the end of the eighties of the last century, the representatives of the Communist Party, seeing the weakness of a hegemonic party, successfully pushed through the concept of restoring the institution of president in light of the changing constitutional order of the state. The president, who was to be the guarantor of the functioning of the regime within the framework of a socialist state, not only failed in his role (the presidency of General Wojciech Jaruzelski), but starting in December 1990 (after the taking of office by Lech Wałęsa) became a participant and very often also a contributor of democratic change.

An analysis of various democratic political regimes shows that they focus around three models: the parliamentary regime, presidential regime and semi-presidential regime (also referred to in terms of a mixed or a hybrid regime), though some authors believe that the latter is only one of many varieties of the parliamentary regime [Szymanek 2007: 63]. In the literature of the subject we can find numerous, sometimes significantly different concepts defining the characteristics of different political regimes. In all, however, the head of state plays an important role.

Taking into account the position of the head of state of a republic, the different democratic political regimes can be assigned specific models of presidency. For presidential regimes, the model of executive presidency is most appropriate, as the head of state has a real ability of shaping the policy of the state and directly performs the function of governance [Chorażewska 2008: 9]. As a result, the president's permanent political activity and participation in the political game are constitutive attributes of the presidential model of a political regime. In the framework of the semi-presidential regimes and parliamentary regimes, an arbitral presidency may appear. But while in semi-presidential systems, arbitration has a primarily formal character and thus arises from the powers granted to the head of state, which are expressed in the constitution, in parliamentary regimes the arbitral presidency is rather related to the concept

of informal arbitration, whose effectiveness depends mainly on the authority of the head of state¹. Finally, in the framework of a parliamentary regime, there may appear the so-called neutral presidency, characterised by the head of state's lack of power to take any decisions which would be executive in nature [Chorażewska 2008: 13-16].

It follows from the above that the basis behind the isolation of the three models of presidency are both institutional and behavioural aspects of the functioning of the institution of the head of state. The impact of the particular models in empirical political regimes is varied, and case studies appear to be the most useful research method in this respect. They require more variables to be taken into account and simple comparative analyses no longer suffice. This in turn reveals the specificity and uniqueness of specific solutions or practices. As a consequence, it becomes possible to state whether a given presidency is strong or weak, and moving beyond a strictly normative aspect of the analysis could prove crucial for a proper understanding of the actual role of the president in a given political regime.

In considering issues related to the political position and the role and importance of the president in his relations with the parliament and within the executive, it is important to mention the ways in which the head of state is elected. This issue is considered to be one of the most important in the context of the processes governing the arrangement of a particular political regime. Although in the literature of the subject one will find the view that the way a president is elected does not yet define the adopted political regime [Jarentowski 2009: 37], it seems however that such an approach is narrow-sighted, as the role of the legitimising aspect of electoral procedures is belittled. The way the head of state is elected should be considered in a broad context. One should relate both to the concept of exercising power and to the procedures for executing the accountability of the different state authorities, which is reflected in the orientation of the relationship between the legislative and the executive and in the framework of the latter (if it is dualistic in nature) as a consequence of how the principle of separation of powers is implemented in a given state. There is therefore no doubt that the status of the role of the president in the system should be a function of the way in which he is elected [Szymanek 2009: 363], while the scope of competence allowing him to take executive actions should be correlated with an appropriate legitimising mechanism. The way the head of state is elected is thus an element which constitutes a specified model of presidency, which subsequently translates into the adopted democratic political regime model being exercised.

¹ More on the concepts of „formal arbitration” and „informal arbitration” in [Szymanek 2009: 75-76].

The arrangement of the election process of a republican head of state should therefore be backed by far-reaching logic and consistency, allowing for a holistic approach to the presidency model being implemented. In this context, it is justified to put forward the assertion that “the way of choosing the president is (...) one of those elements in the constitutional arrangement of each presidency, which, practically speaking, directly or indirectly influences all the other elements defining the presidency model” [Szymanek 2009: 363]. This means that the election of the head of state should be correlated with the position of this body in the system of separate authorities, its position in the political system, and with the characteristics of its representative nature and scope of competence [Glajcar 2004: 164]. Thus, taking into account the need to create a pragmatic and functional institutional system, the method of selection of the head of state should be strictly correlated with the scope of its competence, and subsequently its place, role and importance in the entire institutional system. The method of election of the head of state should reflect the assumptions made about the presidency model being planned and executed [Lijphart 2004: 104] and in this sense it is not, in any case, peripheral.

Determinants of the selection of the type of presidential election method

The adoption of a particular model of election of a republican head of state should be considered one of the most important decision concerning the creation of a democratic institutional system. The final decision is affected by various factors. By analysing this issue in the context of the political foundations of the Third Polish Republic, one must specify both the endogenous and exogenous factors involved. Among the first ones, the following are of particular importance: the legacy of the past, the situational context of the prodemocratic changes and preferences among the political actors, which is reflected in the competition for the most desired shape of the institutional system, the most essential component of which is the process of creating a fully democratic constitution. The latter of the factors includes: institutional standards derived from the democratic political regimes of the Western world and the experience of countries of the region, which have entered the path of democratic development more or less at the same time as Poland (at the turn of the eighties of the last century).

Endogenous factors

Polish political tradition is rather modest in terms of the way the president is elected. The same can be said about the history of the institution of president itself. It was introduced under the March Constitution of 1921 and survived throughout the entire period of the Second Polish Republic. After WWII it was only briefly included into the power structure of the state. The creators of the July Constitution of 1952 did not see the need to maintain it, which was a reflection of their vision of how the political system should be structured, marked by their enthusiasm over collegiate bodies and, consequently, by the highlighting of the role of the State Council, often referred to as the “collegial head of State” [Glajcar 2004: 103-104]. The adoption of such practices was the result of the copying of Soviet standards, which were new to the Polish political tradition.

The institution of president did survive within the structures of the government in exile, and an event which emphasised its continuity and direct link with the Third Polish Republic was the handing over in 1990 of the insignia of presidential power by the last President of the Republic of Poland living in exile, Ryszard Kaczorowski, to the newly elected head of state, Lech Wałęsa. However, in view of the fact that from 1944 to 1990 the government in exile did not have any real possibilities to impact the situation in the country, their functioning was rather symbolic in nature.

With regard to the issue of how the president was elected, an analysis of the heritage of the past requires a distinction to be made between constitutional tradition and constitutional practices of the past. With regard to constitutional tradition, it needs mentioning that the Polish constitutions in force between 1921-1989 provided for both universal and non-universal suffrage in the election of the head of state. The latter of the two methods of election was predominant, which was enacted by the constitutions which were in force during the Second Polish Republic (the March Constitution and the April Constitution), as well as the Small Constitution of 1947. The election of the president in popular vote was only a fallback procedure laid down in the constitution of 1935, and confirmation of the powerful constitutional position of the head of state.

Constitutional practice, constituting another essential element making up the heritage of the past, has demonstrated that universal suffrage did not go beyond the constitutional standard. It never found application in constitutional reality, which meant that the non-universal election model was the only one used in the years 1921-1952.

It is worth noting that there is often a one-way relationship between the heritage of the past and the events to come. The issue concerning the way the

presidents of the Third Polish Republic were elected shows that this relationship is not absolute, and that other factors, other than the legacy of the past, also determine the process of change. One key factor are the circumstances connected with the transition from authoritarian to democratic forms of governance. In their course, many political institutions characteristic of a transitional period, are created [Ágh: 1] which are a foundation for the functioning of the political regime in a new environment and according to new rules. The duration of such institutions is not uniquely defined. They can last very briefly, but one cannot rule out the possibility of them becoming essential elements in the institutional landscape during the consolidation of democracy.

The restoration of the institution of president in 1989 was an example of reference being made to constitutional tradition. In the positive sense it meant a reference to the experiences of the Second Polish Republic, whereas in the negative meaning it involved a severance with the solutions of the Constitution of the People's Republic of Poland of 1952, which were not familiar to the Polish constitutional tradition and which were imposed by force. This does not, however, seem to be the most important of issues. In fact, the direct circumstances surrounding the restoration of the institution of a sole head of state in 1989 turned out to be far more important. Their genesis dates back *de facto* to the seventies of the last century, when in the womb of the Polish Communist Party there began to appear ideas for the restoration of the institution of president. Many of those ideas never saw the light of day, while others were only a reflection of the intentions of finding a concept for the reform of the political system. However, in 1989, the government coalition, which was led by the Communist Party, promoted the idea of restoring the institution of president equipped with a wide array of powers. Through it, the coalition intended to control the process of democratisation.

In these circumstances, the primary objective of the ruling camp was to ensure such a form of election of president, which would guarantee the taking of office by one of the coalition's representatives. Looking from the perspective of the interests of the camp which at that time ruled Poland, non-universal elections, held by the National Assembly and based on an absolute majority of votes, seemed to be the best solution. In view of the fact that the Communist Party and its coalition members were guaranteed 65% of the seats in the Contract Sejm, parliamentary arithmetic indicated that the seat of president would be taken by a candidate proposed by this very group would become president, which became reality on July 19, 1989, though not everything had gone according to plan.

There is no doubt that the method of electing the president and the resulting legitimisation mechanism did not correspond to the scope of powers

conferred on the head of state. Their scope, which, at least in respect of certain areas, meant unlimited power of the president (arbitrary decision-making power to dissolve parliament, the possibility of blocking the mechanism for the formation of government by choosing a prime minister having no support of the parliamentary majority, etc.), fully justified the direct involvement of citizens in the process of selecting the head of state. This, however, did not happen, and was rather a result of the compromise reached at the Round Table, which was reflected in the novelisation of the constitution of 7 April 1989 [Dziennik Ustaw z 1989 roku, Nr 19, poz. 101]. The constitutional reform of 1989 was evidently ad hoc in nature and was meant to provide a smooth transition from a monocentric system to a system characterised by political pluralism [Sokolewicz 1989: 6]. Therefore, in reactivating the institution of president, no comprehensive decisions were made on the model of presidency. In this sense, the institution of president orchestrated in 1989 represented a type of transitional standard, which could be used later as a point of reference for building more democratic structures of government.

In 1990, there was a significant change in the rules for the election of president. For the first time in the history of the Polish elections, universal suffrage became the sole method of electing this institution. It was no longer only an alternative. The grounds for a such a course of events were mainly of a political and personal nature. Firstly one should take into account that prodemocratic changes were gathering momentum, which in turn eroded the calendar of changes agreed upon at the Round Table. Wojciech Jaruzelski was one of the people very well aware of this and he made the decision to resign from the further exercise of his office. Secondly, the new president had to be elected before fully free parliamentary elections were held. Therefore, maintaining the current election method would mean that the president would be elected by the National Assembly, whose mandate came from the contract election of 1989. It was therefore important to find such an election method, which would clearly give democratic legitimacy to the newly elected president. Thirdly, an election method which was different from the one used in 1989 marked the beginning of a new period of building democratic order, and the end of transition from authoritarianism to democracy. Fourthly, the implementation of the concept of universal suffrage was to help overcome the personal and political dispute between Lech Wałęsa and the Centre Agreement party on one side, and Tadeusz Mazowiecki with his Citizen's Movement for Democratic Action party on the other [Ciapała 1999: 77].

It appears, therefore, that the adoption of a universal model of presidential election in 1990, was not an expression of a coherent vision of presidency, but rather a reaction to changes in the political system. Nevertheless, it should be

assumed that from this moment on, the method for the election of the head of state was in line with the scope of competences constitutionally conferred to it, which meant that the president became a very powerful political actor, especially with regard to parliament, and whose legitimacy was not fully democratic until 1991. Actually, one might consider that the implemented model was somewhere between an executive and an arbitral presidency. This was especially true for the first period of the presidency of Lech Wałęsa [Wiatr 2000: 92] when the Contract Sejm was still functioning, and the government, headed by Jan Krzysztof Bielecki, was referred to as the former Solidarity leader's personal cabinet. Over time, after the first fully free parliamentary elections in 1991 and after the formation of the government of Jan Olszewski, the presidency being carried out was closer to the arbitral model.

With the coming into force of the Small Constitution, the constitutional position of the president was also adjusted. This institution was in fact formally set in the realities of the principle of the separation of powers. Although the head of state did possess significant powers, there were limitations concerning their actual application. One such limitation was the requirement for countersigning the executive acts the head enacted. In considering the relations between the legislative and executive and the relations between the authorities forming the latter, it can be concluded that they fit somewhere between the parliamentary and semi-presidential model. Constitutional practice, marked by a phenomenon called the *Falandisation* of law, made the latter model become the point of reference for the analysis of the democratising Polish political regime. The tensions, which as a result were appearing between the president and parliamentary majority as well as between the president and government, became one of the arguments for the limitation of the president's competence in the constitution of 1997. Finally it happened that the political regime established and implemented in practice after 1997, was the one which received most coverage in literature [see e.g. Brodziński 1997: 48] as a form of rationalised parliamentarism.

Regardless of the evolution of the powers of the president, the universal suffrage introduced in 1990 with regard to this institution was maintained. What's more, it was this very feature that did not, practically speaking, raise any major doubts among the participants of constitutional debates, while its opponents were few and far between. Indeed, psychological, propaganda and ideological arguments prevailed, which "pushed for universal suffrage as an expression of the democratization of the system, as a value in itself," [Ciapała 1999: 82]. Over time, this method of election of the head of state was accepted by more and more Poles [Wojtasik 2011: 205-226] who were ready to treat any attempt at taking away the right to vote for the head of state as a restriction of citizens' right to participate in public life.

Exogenous factors

The absence of the institution of president, which lasted for several decades and which was caused by the adoption after WWII of a Soviet style model of institutional organisation, forced the creators of the institutional foundations of the democratic regime to refer to the experiences of the developed Western democracies. Of course, the restitution of the institution of president in 1989 was the result of a compromise reached by the participants of the Round Table. In practical terms this decision was further expanded in July 1989, when the office of the president of the People's Republic of Poland was taken by Wojciech Jaruzelski. This event, which was a part of the general political system change schedule in the country, constitutes a turning point in the discussion about the most desirable model of presidency. An important determinant for the emerging system proposals was the style in which Wojciech Jaruzelski and the subsequent Polish presidents exercised their powers. No less significant was the context of the situation, especially in the first period, which was marked by exceptionally dynamic changes undermining the agreements agreed upon at the Round Table. In such circumstances, the institution of president and the preferred model of presidency stopped being part of the Round Table compromise, and began to be the subject of in-depth analysis with Western standards as a point of reference.

The presidency models adopted in the twentieth century in the countries of the world entering the path of democracy were mostly influenced by American and French experiences. The first of the two was popular especially in the region of Latin America, while the second one left its mark on the Old Continent [Słomka 2005: 12-13]. Poland at least to a certain extent confirms this assertion. At the beginning of the nineties of the last century one of the most zealous proponents of the introduction of the political standards typical for French semi-presidentialism was president Lech Wałęsa. He sought to maximise the power of the executive, which would be headed by the president [Siemieński, 1992: 105-109], which in turn would lay the ground for the need to elect the head of state in universal and direct suffrage. This concept gained wide public support, though it garnered much opposition as well. As a result, the changes being introduced were not consistent enough to conclude that the solutions coming straight from the French Fifth Republic were pasted into the Small Constitution of 1992, but they certainly had a significant impact on the decisions of the founders of the emerging democratic regime. In this respect, over time the issue of a universal and direct election of the head of state was beyond dispute, and any suggestions to undermine this model were criticized as an attempt to return to the agreements of the Round Table.

Over time, the fascination of the Polish political elite with the French institutional model began to wear off and was increasingly more perceived as unattractive, or even useless, in the Polish political reality, a fact reflected in the drafts of the constitution submitted to the Constitutional Commission of the National Assembly [Gdulewicz 1997: 111]. The decisions of this authority were impacted, however, by two issues. Firstly, the style of Lech Wałęsa's rule as president was eventually frowned upon, which resulted in proposals to return towards a German-style parliamentary regime as a guarantee of greater stability in the relationship between the legislative and executive. Secondly, after the election of Aleksander Kwaśniewski as president, there appeared numerous proposals to maintain the strong position of president, which was an expression of the political opportunism of the political forces dominant in the Constitutional Committee of the National Assembly [Witkowski 2007: 327, 343]. As a result, a specific model of the institution of president appeared, characterised by an eclecticism of solutions typical for the three traditional models of political regime. The election of the head of state in a universal election has remained an important hallmark of the model of the Polish presidency, and is strongly akin to characteristics of a semi-presidential regime.

The second of the exogenous factors which it is worth noting, is connected with the experiences of countries in Central and Eastern Europe. These countries demonstrate a progressive tendency towards the election of the President by way of universal suffrage. What's more, the introduction of such a method of election of the head of state is not the result of a conscious adoption of a given model of presidency. Instead, one can observe a tendency in which the method of election of the president is not correlated with the scope of powers granted to him (and if so, then only to a small extent). Changes relating to the election of the head of state made in the Slovak Republic and the Czech Republic are perhaps the best examples of such inconsistencies among the legislators. However, one should not treat changes of this type as ill-considered. It appears that electing the president by universal suffrage in young democracies may be a cure-all for any potential deadlock within the system, which could occur, if it was impossible to establish within the parliament (or in a specially established electoral collegiate body) a compromise candidate for the office of president. The Slovak example from the end of the last century showed that this type of situation is not only hypothetical in nature. In turn, taking the decision about the choice of president for determination to the sovereign is a guarantee of the successful completion of the electoral process. As a result, universal suffrage, as shown by the experiences of the states of Central and Eastern Europe, is not treated as a component of a particular model of presidency, but is, first and foremost, an expression of constitutional pragmatics.

Having regard to the specificities of competition on the Polish political scene, which is marked by deep divisions, one may consider the universal election as the best guarantee of successful completion of the election process of a republican head of state. In situations where the parties to a political conflict view each other more in terms of an enemy rather than a political opponent, the chances of finding a compromise candidate for president, who would gain the backing of an electoral body (e.g. parliament) seem small. As a result, the maintenance of universal suffrage as a method for the election of a head of state seems to be more beneficial, looking from the perspective of the institutional stability of the system, even if it does not fully correspond with the scope of the powers conferred to the president on the basis of the Constitution of 1997. Of course, such a situation is not in all respects favourable, as the existence of double democratic legitimisation within the political regime of the Third Polish Republic (i.e. the president and the parliament chosen by means of universal suffrage) is one of the sources of conflict between the president and the parliamentary majority (government), which, especially during periods of cohabitation, have demonstrated the potential to thoroughly shake the Polish political scene.

Conclusions

Poland held its first ever popular presidential election at the end of 1990. Since then four such elections have been held i.e. in 1995, 2000, 2005 and 2010. In the meantime the position of the president gradually evolved hence giving rise to the question about which method for the election of the head of state is most “appropriate”. However, this issue was not an object of political deliberation for the major Polish political parties of the last 20 years. Firstly, this resulted from the popularity of the presidential election within society, which was reflected in high turnouts (considering Polish reality), especially when compared with parliamentary or local government elections. Secondly, especially until the enactment of the Constitution of the Republic of Poland of 2 April 1997, no party wanted to run the risk of being accused of returning to the political transition solutions adopted at the Round Table. Thirdly, until the beginning of 2010, the competition for the office of president was “reserved” for charismatic leaders or party leaders (Lech Wałęsa, Aleksander Kwaśniewski, Lech Kaczyński). It was finally Donald Tusk, who decided not to contend for the presidential election of 2010 thus wanting to change the perception of the institution of president in the system of power and draw attention and emphasize the role and the importance of a government with a strong (normatively and factually) prime minister as the leader. His actions resulted in an unexpected

proposal to move away from presidential elections by direct universal suffrage to a system of indirect and non-universal elections [*Tusk ...*]. This proposal was, however, of an incidental nature and did not become a key constitutional issue which the Civic Platform party would pursue as part of its long-term strategy. Fourthly, the experiences of Central and Eastern European countries show that universal suffrage, as a method of election of the head of state, is not necessarily regarded by legislators as an element which should correlate with the scope of powers granted to this institution. This leads to the emergence of presidency models which are not always coherent in nature. As a result, it is not the formation of internally coherent institutional structures but rather constitutional pragmatism and the attractiveness of universal suffrage, which play a key role.

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