

THE PROCEDURES OF ELECTION THE HEAD OF STATE IN THE REPUBLIC OF POLAND BEFORE THE SECOND WORLD WAR

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Abstract: *The article concerns a legal way of election the President in the Polish legal order between second world war. The April Constitution 1935, which made the head of state the most powerful body, tried to reflect the political orientation of its creators. The Constitution from 1935 was made personally for Józef Piłsudski. The political option, ruling Poland after 1926, had to construct the wise of president election, which would be secure for the this option.*

Keywords: *President, election, inter-war period, Poland, legal history*

1. VIEW OF THE POLISH POLITICAL HISTORY IN THE INTERWAR PERIOD (1918–1939)

The procedure of election the head of state is very important because of fact, that modules the base of presidential power in the constitutional order of the state and proves a legitimist strength. There is no doubt, that the way of election of the constitutional body has a connection with a scope of competences owned by a authority. The another issue concerns diversification of constitutional orders, that means that often a specific origin of state's institution often is a feature characteristic for one system. For example election of the President by the nation characterizes a presidential system, and by the Parliament – a parliamentary system. Of course it is no very stiff division and there are constitutions containing features of different legal systems (like Constitution of the Republic of Poland, added on the 2nd of April 1997, which introduces the well-balanced parliamentary system¹).

The history of the polish constitutionality during the interwar period is very interesting because the three superior legal sources from 1919 (provisional), 1921 and 1935 introduced totally different constitutional solutions. It was caused by the particular political situation in the Second Republic of Poland. During the Great War many organizations, which were established by the different political parties, tried to make public the problem of the Polish independence. After the 11th of November 1918 the most popular politician Józef Piłsudski, who was bounded up with the Polish Socialist Party, took on the task of unification state's territory under the reign of one Government located in Warsaw. As a formal Temporary Head of State (*Tymczasowy Naczelnik Państwa*) Piłsudski appointed the first independent cabinet with Jędrzej Moraczewski as the Prime Minister and organized the free election to the unicameral Parliament in January 1919. On the 20th of November 1919² the Sejm (*Sejm Ustawodawczy*) in provisional Constitution entrusted Piłsudski with

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¹ GARLICKI, L. *Polskie prawo konstytucyjne*. Warsaw: Liber, 2007, p. 89.

² Uchwała Sejmu o powierzeniu Józefowi Piłsudskiemu dalszego sprawowania urzędu Naczelnika Państwa (Dz. U. 1919, No. 19, item 226).

the office of Chef of State (*Naczelnik Państwa*) till the moment, when the first full Constitution will be issued. The political parties located on the right side of Polish Parliament with the leader, and a Piłsudski's opponent, Roman Dmowski realized that the construction of the new Constitution should assume that Piłsudski would be probably elected on the most prestigious office. This is the reason why mainly the National Populist Party (*Związek Ludowo-Narodowy*), so a faction of the National Democracy, tried to reduce the future president's competences. Piłsudski knew that the work on the project of the new constitution aimed against him. In 1930 during the interview carried out by Tadeusz Świącicki he told that the Constitution passed in March 1921 "was constructed *ad hominem*, (...) that means personally against me"³. K. Kawalec claims that this situation is classical example of giving up theoretical basis of political ideas for the particular aim.⁴ The consequence of this legislative activity was a very weak position of the President in Constitution issued by the Sejm on the 17th March 1921.⁵ It was based on the Constitution of the Third French Republic, and introduced the parliamentary system in which the Sejm had all most important competences. Piłsudski's huge popularity and good reputation after victory during the Polish-Bolshevik war (1919–1921) caused that he received an offer to become a Head of the State. To great surprise he refused claiming that the president's power is only "to put pressure on the other institutions without any rights".⁶ In the election which took place in December 1922 the National Assembly appointed Gabriel Narutowicz for the office. On the 16th of December 1922, also only five days after the swearing-in ceremony, the first President of the Republic of Poland was killed by the nationalist radical Eligiusz Niewiadomski in the Museum of Art "Zachęta" in Warsaw. A few days later Piłsudski's ex-partner from underground activity Stanisław Wojciechowski assumed the vacated function. In 1923 the coalition of parties which were the Marshal Piłsudski's political enemies tried to eliminate his authority, so he decided to stop the political activity and start living in a small village near Warsaw which calls Sulejówek.

Three years later the political situation looked bad. There were many problems with creating a new government and the international position of Poland was dangerous. Piłsudski, supported by his adherents, carried out the coup d'état in May 1926 and created the cabinet with Kazimierz Bartel as the Prime Minister. The new President became very Ignacy Mościcki, who was a very calm and inexperienced person. The era, which is called *un regime extra-constitutionnel*,⁷ is characterized by the dualism of power. The opponents of the government have a majority in bicameral Parliament, but they could not appoint the government because it was occupied by the Piłsudski's confidants. The Parliament was forced to issue an amendment of the Constitution in August 1926, which gave more power to the executive power and less to the legislative power. Piłsudski tried to rule with

³ PIŁSUDSKI, J. *Pisma zbiorowe*. Warsaw: Instytut Józefa Piłsudskiego, 1937, p. 263.

⁴ KAWALEC, K. Spory o kształt ustroju II Rzeczypospolitej. In: PERSAK, K., MACHCEWICZ, P. (eds.). *Polski wiek XX. Dwudziestolecie*. Warsaw: PWN, 2009, p. 111.

⁵ During the work on the new Constitution the name for the head of State (*Naczelnik Państwa*) was rejected, because of the strong position of this body in the legal order; KALLAS, M. (ed.). *Konstytucje Polski. Studia monograficzne z dziejów polskiego konstytucjonalizmu*. Warsaw: PWN, 1990, p. 84.; *Konstytucja Rzeczypospolitej Polskiej z dnia 17 marca 1921* (Dz. U. 1921, No. 44, p. 267).

⁶ PIŁSUDSKI, J. *O państwie i armii. Wybór pism*. Warsaw: Państwowy Instytut Wydawniczy, 1985, pp. 151–158.

⁷ RYSZKA, F. *Historia państwa i prawa Polski 1918–1939*. Warsaw: PWN, 1962, p. 98.

the Constitution from 1921, but, in fact, it was too difficult to adhere to the letter of the law. Constitutional precedents were one of the most distinct features of the new regime. This practice is good illustrated by one example. In September 1926 the Sejm according to article 58 the Polish Constitution passed the vote of no confidence towards two members of the cabinet Antoni Sujkowski and Kazimierz Młodzianowski. The Prime Minister Kazimierz Bartel handed his resignation as a protest against the decision of the Parliament. The President Ignacy Mościcki, after a consulting with Piłsudski, appointed the new government with the same composition of the cabinet. The Sejm could not do anything because the legal order did not mention this case. This way of rule using precedents was mainly worked out by one of the authors of the next supreme legal act, lawyer and politician, Stanisław Car, called humorously by the opponents *Jego Interpretarskoje Wieliczestwo* (his interpretation Majesty). It is important to say that Piłsudski had to find a solution to govern as a part of legal order. Only a small group of observer realized that the Constitution from March 1921 could not manage with the Marshal's phenomenon.⁸

In march 1928 the parliamentary election was organized. It was the first time when Józef Piłsudski's supporters took part in the election as a one political party, with the official name "The Nonpartisan Bloc for Cooperation with the Government" (*Bezpartyjny Blok Współprcy z Rządem – BBWR*)⁹. It brought together people of assorted political views who supported the Piłsudski's policy. The leader and the creator of this body was Walery Sławek – Marshal's friend and partner from an underground activity. In this election the BBWR won, getting only 21% of votes in the Sejm. It was not enough to change the Constitution. In spite of the small amount of seats in the Parliament, the representatives of the government's party submitted on the 6th of February 1929¹⁰ the project of act amending in the binding supreme state's act. The main stream of proposed changes focused on the spreading the power of the President and the government. The opposition did not agree with the proposals, and constitutional deliberations were interrupted by the dissolution of the Parliament in August 1930. After it Piłsudski ordered to arrest the most important political opponents and bring a lawsuit against them. The new elections, called "Brest election" (*Wybory Brzeskie*)¹¹, finished successfully for the government, because the BBWR got near 56% of all votes. Despite not quite legal forms of winning votes, the strongest political group in the polish Parliament did not have chance to change the Constitution and need to hold talks with the opposition. In this situation leaders of other parties decided to obstruct an undertakings concerning the new state's legal order. It is worth to mention that there were two other systems of constitutional works: an official and an unofficial. The first was carrying on in a special parliamentary commission, which brought forward the project of the binding Constitution with new, unbinding changes in February 1931. The

⁸ The commentary written by CHOJNOWSKI, A. *Komentarz. Karta*. 2006, Vol. 48, p. 66.

⁹ W. Kulesza noticed that a source of inspiration for establishing the BBWR was in government. In a casual situation is the other way round. It means that a party is created to participate in governing the state. KULESZA, W. T. *Koncepcje ideowo-polityczne obozu rządzącego w Polsce w latach 1926–1935*. Wrocław: Ossolineum, 1985, p. 178.

¹⁰ It is no accident that the project of changing Constitution was submitted this day. According to article 125 of the Constitution from 1921 the second elected Sejm had a a right to amend this legal act by a qualified majority (3/5) as opposed to the casual Sejm, which could change the Constitution by a qualified majority (2/3).

¹¹ The name comes from the military stronghold in Brest (*Brześć*), where the arrested politicians were detained.

unofficial work started in a summer 1933, when Stanisław Car and Bohdan Podoski were invited by the President Ignacy Mościcki to his residence in Spała. During this one-month stay they created the new project of Polish Constitution, completely different from the binding one. The draft was made up by Walery Sławek, who added some provisions concerning legal principles and a base of the new legal system.¹² It was not in harmony with Piłsudski's enunciations in which he claimed that a supreme legal act in state should be only "something like a contract between three main constitutional springs powering the whole state"¹³, what means that there is no place for principles.

The new Constitution was issued in January 1934 by the Polish Sejm and one year later by the Senate. It is worth to mention using not quite legal way to pass the act by Sejm, which seized an opportunity that there was only one representative of the opposition.¹⁴ On the 23rd of April 1935 the President of the Republic of Poland Ignacy Mościcki signed the text of the Constitution, which took effect on the next day (!)¹⁵. It introduced a presidential system with some elements of authoritarianism and accomplished the idea that the state is a of all the citizens. It also limited the powers of the Sejm and Senat while strengthening the authority of the President of Poland. There was no trisection of power, because legislative, judicial and executive power were under presidential control. Article 2 section 2 stated that the President of Poland was liable only to "God and the History".

A strong position of the head of state according to the April Constitution was connected with the Józef Piłsudski's authority. Unfortunately on the 12th May 1935 68-years old Marshal died in the Belvedere in Warsaw. The death of the indisputable leader of a ruling elite caused many problems with a political heritage. The period, named "the decomposition of the governing camp"¹⁶, became. After the period of competition between the President Ignacy Mościcki, the General Inspector of Military Forces Edward Rydz-Śmigły and the Minister of Foreign Affairs Józef Beck, the agreement was achieved. The new cabinet with Felicjan Sławoj-Składkowski as a Prime Minister was exercising for three years, so till the beginning of the Second World War.

The Constitution from April 1935 showed that the strong position of the President in the Polish legal order was not the best solution. Ignacy Mościcki, who according to the Piłsudski's will should resign as the head of state in favour of Walery Sławek, was a person who many matters treated personally, what caused irrational decisions.¹⁷

¹² PODOSKI, B. Prace nad Konstytucją Kwietniową. *Niepodległość*. 1979, Vol. 12, p. 189 ff.

¹³ „(...) konstytucja ma zawierać tylko coś w rodzaju układu, coś w rodzaju kontraktu pomiędzy trzema głównymi sprężynami, poruszającymi centralę państwową.”: PIŁSUDSKI, J. *Pisma zbiorowe*. Warsaw: Instytut Józefa Piłsudskiego, 1937, p. 259.

¹⁴ Stanisław Stroński. The rest of opposite politicians decided to leave the session, as a indication of an obstructive policy.

¹⁵ Ustawa zasadnicza Rzeczypospolitej Polskiej z dnia 23 kwietnia 1935 (Dz. U. 1935, No. 30, item 227).

¹⁶ GARLICKI, A. *Od Brześcia do Maja*. Warsaw: Czytelnik, 1985.

¹⁷ A good illustration of this conduct is a situation from 1938 when after the death of the Speaker of the Sejm, the lower chamber elected for this office Walery Sławek. It was in contradiction with an opinion of the government and the President, so Mościcki decided to dissolve the Parliament and order a new election. The other situation depicts very well this opinion. In September 1939, so after the Polish-German fight had started, the opposition parliamentary groups offered to the President a forming a new government of national unity, which would gather representatives of all political parties. Mościcki refused them, because he was afraid the domination of the opponents (see: MIROWICZ, R. *Edward Rydz-Śmigły: działalność wojskowa i polityczna*. Warsaw: Instytut Wydawniczy Związków Zawodowych, 1988, p. 178).

To sum up it worth to say that the political and constitutional history of the Second Republic of Poland was very interesting and presenting different legal solution. The strong authority of Marshall Józef Piłsudski shaped the whole political area and had an important contribution to provisions of the Polish Constitutions, also the procedure of election the head of state.

2. THE PROCEDURES OF ELECTION THE HEAD OF STATE IN THE POLISH CONSTITUTIONS FROM 1921 AND 1935

The Constitution of the Republic of Poland from 17 March 1921 regulated the procedure of election the head of state narrowly. It is worth to mention that there was no separate chapter concerning the legal situation of the President. There was only chapter III “The executive power” containing provisions connected with situation of the President and the Government in the state’s order. According to article 39 of the March Constitution the President of the Republic of Poland was elected for 7 years by the National Assembly by a absolute majority vote, which came to existence after join the Sejm (444 members) and the Senate (111 members). It is worth to mention that this Act was very liberal with reference to conditions, which had to be fulfilled by the candidate.¹⁸ He had to be more than 21 years old, and have all civil rights. During the work on the new Constitution creators cited the provisions of the Constitution of the Third Republic of France from 1875 and the Czechoslovak’s Constitutional Charter.¹⁹ There were a few ways to begin the procedure. In random situation the President should summon the National Assembly within last quarter of his working as a President. If he would not do this until 30 days before the end of term of office the Sejm and the Senate joined *ex lege* chaired by the Speaker of the Sejm. The Constitution provided for extraordinary situations in which the office was vacated, when the President died, resigned or the Sejm passed the resolution dismissing with a qualified majority (3/5). In this cases the President is substituted by the Speaker of the Sejm (*Marszałek Sejmu*) and the National Assembly came into being *ex lege*. When the Parliament would be dissolved the Speaker immediately called the elections to the Sejm and the Senate (article 41). The detailed provisions contained the act from 27th July 1922 the Rules of the Procedure of Elections the President by National Assembly²⁰. The President or the Sejm’s Speaker called an election. Article 7 of the Rules said that the election was valid when the half of all the National Assembly members took part in the session. The main principle was an open session (article 8). To underline the importance of election it was forbidden to deliberate or vote in other cases in the day of election. The Speaker of National Assembly who was the Speaker of the Sejm received the suggestion concerning potential candidates. Only a suggestion supported by 50 members was valid (article 12). Than the Speaker opened the session and every single member of the National Assembly, whose name was

¹⁸ GÓRECKI, D. Prezydent w Konstytucji kwietniowej – oryginalność rozwiązania konstytucyjnego. In: SARNECKI, P. (ed.). *Prawo konstytucyjne II Rzeczypospolitej. Nauka i instytucje*. Cracow: Wydawnictwo Uniwersytetu Jagiellońskiego, 2006, p. 137.

¹⁹ KALLAS, M. (ed.). *Konstytucje Polski. Studia monograficzne z dziejów polskiego konstytucjonalizmu.*, Warsaw: PWN, 1990, p. 84.

²⁰ Ustawa z dnia 27 lipca 1922 r. – Regulamin Zgromadzenia Narodowego dla wyboru Prezydenta Rzeczypospolitej (Dz. U. 1922, No. 66, item 596).

read, voted in writing form for one candidate. A candidate who got absolute majority of votes won. Blank papers, vote for a person who was not a candidate and paper with name of voter was invalid. If there was no winner, the election should be repeat. If there was the same situation a candidate who got the less amount of votes was dropped out. This procedure was repeating till the President was elected. It is interesting that according to article 19 if two last candidates received the same amount of votes two times, a lot decided. Then the Speaker announced a result. If the new-elected President did not accept a choice or refused to swear an oath, the Speaker should call a new election.²¹ Because article 53 of the March Constitution demanded from the elected candidate to be independent, article 24 of the Rules anticipated the possibility of resignation a seat in the Sejm, the Senate or other office. Next the Speaker of the Sejm or the Senate (if the first one was elected) had to call the National Assembly to listen to an oath took by the new-elected President. The text of the oath was specified in article 54 of the Constitution. According to the section 1 article 24 of Rules issued in 1922 after that the new President in a presence of ex-President, Prime Minister and Speakers of the Sejm and the Senate took over the power and from this moment was performing the function of the head of state. It is worth to underline that the text of the oath manifested deeply Christian character,²² what was contrary to the religious and belief freedom, guaranteed by the article 111 of the Constitution. It was not forbidden to be reelected.

The election procedure in April Constitution from 1935 is much more complicated. All provisions were contained by the chapter II named “The President of the Republic”. Provisions realized very strong presidential influence on the procedure of election the new head of state.²³ Waław Komarnicki enumerated three reasons of regulations: 1) high authority of the President, 2) problems with the *virtim* election of the King before 1795, 3) problems with minorities and ethnical groups in the Second Republic.²⁴ Article 16 section 2 said that: “The candidate for the office of President of the Republic is appointed by the Electoral Assembly”. The conditions which must be fulfilled by the candidate were the same like in previous Constitution. This body consisted of the Speaker of the Senate (as a chairperson), the Speaker of the Sejm, the Prime Minister, the General Inspector of Military Forces and 75 the noblest people elected by the Sejm (50) and the Senate (25). Electoral Assembly was called by the President till 15 days before the end of the term of the office. It could be also called immediately by the Speaker of the Senate²⁵ if the office was

²¹ This situation took place once in May 1926 when the National Assembly elected Józef Piłsudski, who did not agree with the result of the election.

²² Article 54 states: Before assuming office, the President of the Republic takes his oath in the National Assembly, in the following terms: “*I swear to Almighty God, One in the Holy Trinity, and I vow to Thee, Polish Nation, that while holding the office of President of the Republic I will keep and defend faithfully the laws of the Republic and above all the constitutional law; that I shall serve devotedly, with all my power, the general good of the nation; that I will avert, watchfully, from the state all evil and danger; that I will guard steadfastly the dignity of the name of Poland; that I will hold justice toward all citizens without distinction as the highest virtue; that I will devote myself individually to the duties of office and service. Se help me God and the Holy Martyrdom of His Son. Amen.*”

²³ KALLAS, M. (ed.). *Konstytucje Polski. Studia monograficzne z dziejów polskiego konstytucjonalizmu*. Warsaw: PWN, 1990, p. 188.

²⁴ KOMARNICKI, W. *Ustrój państwowy Polski współczesnej. Geneza i system*. Vilnius: [self-published] 1937, p. 201.

²⁵ According to the article 23 “If the presidential office was vacated, the President was substituted by the Speaker of the Senate or the ex-Speaker of the Senate if the Parliament was dissolved.” It is one of many examples which prove that authors of the Constitution tried to weaken a position of the Sejm.

vacated (e. i. when the head of state died, resigned or was dismissed). A candidate elected by the Electoral Assembly assumed the presidential office after seven days from the day of a vote. There was only one exception: if the President appointed a new candidate, a national election was organized (article 16 sections 3 and 4). It was a sign of the strong legal position of the President in the constitutional order after April 1935. The citizens had a right to choose one from two candidates. The true is, according to the ex-Speaker of the Sejm opinion, that in fact this procedure prevented from electing the head of state by the Nation.²⁶ The term of the presidential office lasted 7 years, but Piłsudski thought about perpetual term, resigning from this idea for the reason that there is no person who can be suitable person for this function.²⁷ Detailed regulations for the constitutional provisions were issued in the 8th of July 1935 in Election of the President of the Republic Act²⁸. It was longer than the previous act from 1922 and regulated very deeply issues concerning the election. The most important part I, chapter III elaborated the procedure of Electoral Assembly session. Each single elector had had an obligation to swear the oath before he started to vote. Article 14 section 1 of the Act said that the election was valid when the half of all the Electoral Assembly members and the chairman took part in the session. Candidates for the official candidate for the office should be proposed by 8 electors at least. The electors voted in written form for only one candidate. A candidate who got absolute majority of votes won. If there was no candidate who won in two ballots, a candidate with the less amount of votes was dropped out. This procedure was repeating till a candidate for the presidential office was elected. Then the Chairman announced a result and informed the President. If he resigned from his right to designate the presidential candidate in written form or did not realized his right within 7 days, the person who was chosen by the Electoral Assembly became the President of Poland (article 28), otherwise the national election should be appoint. It was regulated by the part II of the act from 1935. The right to vote deserved to men and women who were 24 years old and more and they were not deprived of right to elect the member of the Sejm (article 31). It is interesting that the Constitution did not mention the age of voters. Citizen voted in written form by secret ballot, equally and directly. The candidate who had got more votes won. It is very important that the Act introduced a possibility to lodge a election protest with Supreme Court. The similar regulation was transplanted to the polish Constitution from 1997 which is binding now. Before the new President took over the power he had to swear the oath according to article 19 section 1 the April Constitution, which contained many Christian features. The Act said that the new head of state started performing the function in the day in which the term of the office was finished. In some cases he could took power immediately (article 66 of the Act). It was not forbidden to be reelected.

The Constitution contained specific regulation (article 24) which said that the term of the presidential office should be extended till three months from a moment a peace after war had been signed. During a war the head of state could appoint the next President if

²⁶ RATAJ, M. *O parlamentaryzmie, państwie demokratycznym i sanacji*. Warsaw: Wydawnictwo Sejmowe, 1998, p. 147.

²⁷ ŚWITALSKI, K. *Diariusz 1919–1935*. Warsaw: Czytelnik, 1992, pp. 620–621.

²⁸ Ustawa z dnia 8 lipca 1935 r. O wyborze Prezydenta Rzeczypospolitej (Dz. U. 1935, No. 47, item 321).

the office would be vacated. The new one could take the power till three months from a moment a peace after war had been signed. It was the reason why the Polish Government and the President in London were being continued during the Second World War and after year 1945.

3. CONCLUSIONS

The problem was that both Supreme Acts in Poland were created personally for Józef Piłsudski. So some regulations were not very rational or others, were not passed. Hopefully the article 24 of the April Constitution was very clever instrument during the war and it caused that the legal power of the head of state could be saved.

The April Constitution introduced very complicated proceeding of the presidential election, which was very original and interesting. We can say that in was the compromise three important principles: designation, election by the Parliament and by the Nation. It was connected with the position of the President in the Supreme Act, because he was the sovereign and the superior of all constitutional bodies. It was not possible to copy the solutions from the previous Constitution, because the President could not be elect by the subordinate Parliament²⁹.

²⁹ GÓRECKI, D. Prezydent w Konstytucji kwietniowej – oryginalność rozwiązania konstytucyjnego. In: SARNECKI, P. (ed.). *Prawo konstytucyjne II Rzeczypospolitej. Nauka i instytucje*. Cracow: Wydawnictwo Uniwersytetu Jagiellońskiego, 2006, p. 137.