

Presidential Elements in Government

Poland – semi-presidentialism or ‘rationalised parliamentarianism’?

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Polish constitutional tradition concerning system of government mainly parliamentarian – Round Table before the Fall of the Wall in 1989 as explanation for the role attributed to the President – development towards a variety of ‘rationalised parliamentarianism’ with a relatively strong role for prime-minister in the 1997 Constitution – system of government not really semi-presidential in nature

INTRODUCTION

Constitutional design involves fundamental decisions about the structure of government. Available options include the parliamentary, presidential and a semi-presidential model; modern constitutionalism in Poland might seem to account for all models. This paper provides an historical and doctrinal overview of the allocation of powers and political accountability and will conclude with a number of observations regarding the actual model of government currently in place. It is submitted that the model adheres to the long-standing constitutional tradition in Poland. The Constitution of 1997 establishes the rapport between the President, the Government and the Parliament within the parliamentary-cabinet model. The Parliament’s position as the residue of popular sovereignty is entrenched, though the distinctive feature of the system is that Prime Ministerial powers are robust and comparatively more independent of the Parliament. The office of the President as part of the dual executive is comparatively weak but flexible. The presidential capacity to influence the democratic process is limited to a number of legal instruments but, on the other hand, is potentially vast as the office has been tai-

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lored to perform the constitutional duties of the Head of State. The position of the President thus is not inherently strong, but constitutional practice can make him (a) powerful (figure).

POLISH CONSTITUTIONAL HISTORY

The constitutional system in Poland, as provided for under the Polish Republic's Constitution of 2 April 1997, relies on the separation of powers principle which is complemented by a structure of checks and balances.¹ The system draws on both the Polish tradition of constitutionalism as well as the vicissitudes of the first stage of transformation that followed the constitutional 'restructuring' of 1989.

Polish traditional philosophy of the state has been one of parliamentarism since the 15th century, through the bicameral Parliament (the *Sejm* and the Senate) of the so-called 1st Republic of Poland (till the end of 18th century) as well as the 2nd Republic of Poland (1918-1939). Furthermore, the development of Polish parliamentarism was not different from European history, in that all progress consisted of adjusting the competences and mechanisms of co-operation between the ruler (the king and, later on, the president) and the representative body of the nation. In this respect, the Polish constitutional tradition is defined exhaustively by the notion of parliamentarism.

Besides by historical tradition, the current mechanism of government in Poland is heavily influenced by the experiences of the first stage of transformation triggered in 1989. It is important to note that the political settlement was made (following the so-called 'Round Table Talks' of April 1989) by and between the hitherto undisputed communist power and its democratic opposition ('Solidarity'). The settlement included, *inter alia*, two decisions concerning the structure of the governmental system. It was decided that two new constitutional organs of State would be established: the office of the President of Poland and the Senate as a higher chamber of Parliament. The President was to be elected by the National Assembly (i.e., the *Sejm* and the Senate acting together). The Senate was to be formed in free and democratic elections. In the *Sejm*, on the other hand, 65% of the seats would be assigned to the communists and the remaining 35% of the seats would be subject to a free ballot – this was the so-called 'contractual' *Sejm*.

These and other settlements made at the 'Round Table' were to spark the process of 'democratisation' of the political arena in Poland – the notion 'democratisation' was held to mean that the country was to be democratised to a limited extent. The office of the President was set up as an institutional accessory

¹ Dz. U. [Official Journal of Laws] 1997/78/483 and 2001/28/319 (corrigendum). An unofficial translation of the Polish Constitution of 1997 in English is available at the website of the Polish *Sejm*: <www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

designed exclusively to safeguard the interests of the communist party and particularly to keep the democratisation process in check.² This is to say that the political system hitherto in place was to be subject to a slight correction so that it could prevail ('restructuring' or *perestroika*). According to the political understanding hammered out in April 1989, General W. Jaruzelski was elected President by the 'contractual' *Sejm* in one round of votes.³ His prospective role was to supervise the evolution of the political system. Presidential functions went along with presidential powers. Accordingly, presidential competences were extended to include the power to dissolve parliament in case parliament passed a bill or a resolution which impeded the President in performing executive prerogatives in the area of internal and external security as well as foreign affairs. In fact, Jaruzelski did not make any use of his prerogatives, remaining only a 'passive observer' of the political developments.⁴

The political and constitutional arrangement made at the 'Round Table', however, was upset when the political situation in Poland and other states of the former Soviet block proved to be both fragile and dynamic. W. Jaruzelski could not but yield to political pressure and resigned from office. The only viable candidate for the office of President was L. Wałęsa. The leader of the 'Solidarity' movement, however, made clear that he would reject the office unless the constitutional arrangements were changed. Wałęsa objected to being elected as President by a Parliament whose democratic credentials were doubtful to say the least. Parliament's democratic legitimacy – it should be noted – was compromised by the fact that the political settlement produced a representative body teeming with representatives of the Communist Party and its satellites. The Constitution was revised to provide for the free, popular and direct election of the President. This amounted to a revolution in as much as the change in the election process also entailed a change in legitimacy vested in the office of the President. Apart from that, the constitutional structure of the state's organs or the scope of their respective competences, for example those assigned to Parliament and the President, were not changed.

² In this context, some authors stress that 'the primary idea of the Polish president was therefore to some extent antiparliamentarian, not to say – anti-democratic' (L. Garlicki, *Polskie prawo konstytucyjne* [Polish Constitutional Law] (Warsaw 2005) p. 267).

³ It is important to mention that W. Jaruzelski was the accomplice of the Martial State that followed the social protests inspired by 'Solidarity' in the years 1980-1981 as well as the President of the State Council, which – in line with the socialist theory of state – was the collegial Head of State.

⁴ A. Dudek, *Pierwsze lata III Rzeczypospolitej. 1989-1995* [First Years of the 3rd Republic of Poland], (Warsaw 1997) p. 55.

THE LEAD-UP TO THE 1997 CONSTITUTIONAL PROPOSALS

The years 1990-1995 mark a heated period of slight constitutional changes as well as gradual development of constitutional and political practice.⁵ The constitutional changes included the *Interim (Small) Constitution* of 1992,⁶ regulating the relations between Parliament, the President and the Government; it was not until 5 years later, however, that a comprehensive and far-reaching constitutional reform was achieved.

Constitutional practice evolved as a function of the dynamic character of L. Wałęsa's presidential style. Any account of the constitutional developments of the period needs to emphasise his strong personality. Wałęsa was not able always to find his place within the confines of the office as inscribed in constitutional norms. The Head of State relied not only on the literal meaning of the constitutional norms but often resorted to a very dynamic method of interpreting the constitutional provisions. Wałęsa's behaviour during his term of office was particularly flamboyant in the years 1993-1995 when the *cohabitation à la polonaise* adorned the political landscape in Poland. The parliamentary majority of the period (social-democrats with the popular peasants' party) was politically hostile to the President; needless to say the antagonism was mutual.⁷ As if to make things worse, a constitutional convention fashioned by the dynamic interpretation of constitutional norms by the President had it that the Government comprised not only candidates of the parliamentary majority but also three ministers 'personally' nominated by the President. The three positions covered by the presidential prerogative by no means were negligible and concerned the three strategic positions of the minister of foreign affairs, the minister of internal affairs and the defence minister. The President nominated his close political associates as key ministers in a Government formed by an opposition parliamentary majority. Presidential nominees thus had a huge sway on the political balance within the Government. The situation was awkward, to say the least, but the result was that the parliamentary majority had to countenance the presidential prerogative to nominate key positions in the government.

The Constitutional Committee of the National Assembly prepared a draft of a new constitution in a disquieting political environment. The parliamentary majority, as noted above, was unfavourable to President L. Wałęsa, whose presidency

⁵ For a comprehensive historical evaluation: J. Ciapała, *Prezydent w systemie ustrojowym Polski* (1989-1997) [The President in the Polish Constitutional System (1989-1997)] (Warsaw 1999) and T. Słomka, *Prezydent Rzeczypospolitej po 1989. Ujęcie porównawcze* [The President of Poland after 1989 from a Comparative Perspective] (Warsaw 2005).

⁶ Dz. U. [Official Journals of Law] 1992/84/426 with further amendments.

⁷ Therefore the period of the Wałęsa is known as a 'wars on the top' period (T. Słomka, *supra* n. 5, at p. 218).

turned out to be a considerable factor that influenced the anticipated model of the office. The personality of the President thus had a huge bearing on the future structure of the system of government of the Polish Republic. This was not a constitutional novelty in the modern history of Polish parliamentarianism as the Constitution of 1921 was drafted 'against' J. Piłsudski, whereas the Constitution of 1935 was drafted 'for' J. Piłsudski, who – as it turned out – never came to be the President of the Polish Republic. Resolved to forestall the robust model of presidency as incarnated in L. Wałęsa's presidency, the Constitutional Committee (headed by Aleksander Kwaśniewski, the then president of the largest parliamentary group) structured a model of the office of President whereby most of the presidential competences were transferred to the Government and the Prime Minister.

TOWARDS RATIONALISED PARLIAMENTARISM

The presidential elections of 1995 were remarkable, not only because of the landslide downfall of L. Wałęsa, who was not elected for a second tenure of office (and in consequence discontinued his political activity at the national level), but above all because A. Kwaśniewski was elected for the office against all odds. Positions thus flipped. The head of the Constitutional Committee and a fervent opponent of the model of a robust presidency became the President elect.

It is therefore hardly surprising that the latter period of the Constitutional Committee's work (1996-1997) was marked by efforts to fashion the powers of the President so as to bring the office out of its ceremonial confines. It is important to note, however, that the fundamental philosophy of the Constitutional Committee's membership did not fluctuate. The constitutional culture of the day subscribed to the tradition of Polish parliamentarianism and emphasised the central role of Parliament. The constitutional model that emerged is best described as 'rationalised parliamentarianism'. In anticipating the detailed conclusions which are drawn below, it can be said that the system does not conform to any of the classical (theoretical) models of government, be they parliamentary, presidential or even semi-presidential.

THE GOVERNMENTAL SYSTEM IN THE CONSTITUTION OF 1997

The structure of government in Poland incorporates the doctrine of separation of powers as well as a system of checks and balances. Under Article 10 of the Constitution of 1997, the Republic of Poland is based on the principle of separation of powers and the balancing of legislative, executive and judicial powers. The power to legislate is vested in the *Sejm* and the Senate. The executive power is conferred

jointly upon the President of the Polish Republic and the Council of Ministers. Courts and tribunals exercise the judicial power.

President

According to Article 127 of the 1997 Constitution, the President is elected by the Nation, in universal, equal and direct elections, conducted by secret ballot for a 5-year term of office.⁸ He is 'the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority', 'shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory' and 'shall exercise his duties within the scope of and in accordance with the principles specified in the Constitution and statutes'.⁹

As far as the Polish membership in the European Union is concerned, it is important to note that the Polish President (contrary, for example, to the French one) is not a 'guardian of the treaties'. In a similar way, as is the case of 21 other current member states,¹⁰ Poland is represented only by the Prime Minister in the European Council of the European Union. In fact there were no serious attempts to pass this task to the President, because, according to the Constitution, the main body responsible for the foreign and defense policy is the government, while the President is 'only' the highest representative of Poland.¹¹

All official acts of the President require a counter-signature of the Prime Minister, with the exception of 30 acts listed in Article 144(3) of the Constitution. As a rule, the President may act alone in spheres falling outside of the executive function in the strict sense, e.g., while influencing the legislature (e.g., performing the right to submit the legislative proposal to *Sejm*) and judiciary (e.g., appointing judges) or performing his arbiter functions (e.g., convening the Cabinet Council).¹²

⁸ The direct elections are one of the main arguments for the relatively long list of the President's prerogatives (M. Kallas, *Konstytucja Rzeczypospolitej Polskiej* [Constitution of the Republic of Poland] (Warsaw 1997) p. 65).

⁹ Art. 126 of the 1997 Constitution.

¹⁰ The exceptions are: France, Finland and Cyprus.

¹¹ Some authors however support the participation of the Polish President in some (but not all) of the summits of the European Council (M. Grzybowski, 'Role ustrojowe Prezydenta RP w kontekście członkostwa w Unii Europejskiej' [Constitutional role of the President in the Context of Polish Membership of the European Union], *Państwo i Prawo* No 7/2004, p. 14).

¹² P. Sarnecki, *Prezydent Rzeczypospolitej Polskiej. Komentarz do przepisów* [The President of the Republic of Poland. Commentary] (Zakamycze 2000) p. 37 and L. Garlicki, *supra* n. 2, at p. 278.

Parliament

Both chambers of Parliament, i.e., the *Sejm* and the Senate, are elected in universal franchise. Parliament plays the dominant role in the system of government as structured by the Polish Constitution. This observation is based both on an analysis of the competences allocated to Parliament as well as of the systematic structure of the Constitution itself. The scope and content of the classical functions of Parliament (i.e., the capacity to legislate, create, and scrutinize), are co-defined and determined by correlative competences invested into other organs of the State, such as the President, the Government and the Constitutional Tribunal. A number of examples should suffice to clarify the picture of constitutional theory and government practice.

The legislative initiative is distributed among the Government, the President, and the Senate as well as any group of at least 15 Deputies of the *Sejm*. Assuming that the system under consideration is one of prime-ministerial more than semi-presidential or classical parliamentary-cabinet government, it would be legitimate to identify the Government as the primary initiator of legislation. In the Polish Parliament, however, the Government's initiative accounts for nothing more than half of the bills; Deputies of the *Sejm* are responsible for most of the remaining initiatives (for the quantitative use the President makes of his legislative initiative, see table 1). The Government controls its own bills until the end of the second reading; until then it absolutely is free to withdraw its proposal should the *Sejm*'s committees introduce amendments that contradict the Government's intentions, without Parliament having the power to counter such a withdrawal (Article 119(4) Constitution 1997). The legislative procedure empowers the Senate to propose amendments to the bill passed by the lower chamber; all such amendments, however, can be rejected by absolute majority vote in the *Sejm* (Article 121(3) Constitution 1997).

The President may refer an adopted bill or any of its provisions back to the *Sejm* for reconsideration (see also table 1); this suspensive veto can be overruled by a 3/5th qualified majority in the *Sejm* (Article 122(5)).¹³ The President can also initiate the procedure of preventive (*ex ante*) constitutional review before signing the bill and ordering its promulgation in the Official Journal of Laws of the Republic of Poland (*Dziennik Ustaw*); see also table 1 (Article 122(3)). The competence to refer an Act of Parliament to the Constitutional Tribunal to adjudicate

¹³ See also: M. Kruk, 'O prawie prezydenta RP do odmowy podpisania ustawy' [On the Right of the President to Refuse the Signature of the Legislative Act], *Przegląd Legislacyjny* No. 1/2004, p. 55-70, M. Kruk, Teoretyczne, i praktyczne aspekty odmowy podpisania ustawy przez prezydenta a jakość prawa' [Theoretical and Practical Aspects of the President's Refusal to Sign the Legislative Act and the Quality of Law], in J. Wawrzyniak (ed.), *Tryb ustawodawczy a jakość prawa* [Legislative Procedure and the Quality of Law] (Warsaw 2005) p. 197-222.

upon the conformity of a bill (or any individual provisions thereof) to the Constitution (constitutional veto) is unconditional. On the other hand, the President is under an obligation to sign and to order the promulgation of a bill if the Constitutional Tribunal rules that it conforms to the Constitution. This obligation to promulgate is conditional when the non-conformity to the Constitution concerns individual provisions of the bill that are not declared inseparable from the whole by the Constitutional Tribunal. In this case, the President, after seeking the opinion of the Marshal of the *Sejm*, can either sign the bill with the omission of those provisions declared unconstitutional, or return the bill to the *Sejm* so that the non-conformity with the Constitution is rectified (Article 122(4)).

Parliament's autonomy cannot be overestimated, and its wide scope has been confirmed in the case law of the Constitutional Tribunal many times. The autonomy of the Parliament includes the privilege of self-regulation as under the *Standing Orders of the Sejm of the Republic of Poland* and its upper chamber counterpart, the *Rules and Regulations of the Senate*. The sovereignty of both chambers of Parliament is also evident in their practical workings. Moreover, it should be noted that the *Standing Orders of the Sejm* (and its Senate counterpart) are a *sui generis* source of law that enjoy supremacy over statutes in the hierarchy of norms as embedded in the Constitution; they may be reviewed by the Constitutional Tribunal but only with respect for the parliament's autonomy on matters of its 'internal organisation' (e.g., the right to elect from amongst its members a Marshal of the *Sejm* and Vice-Marshals – Article 110 Constitution 1997 or appoint an investigative committee to examine a particular matter – Article 111 Constitution 1997).¹⁴

TABLE 1. President in the legislative process¹⁵

| Name of the president | Term | Number of legislative proposals | Number of legislative vetoes | Number of requests for constitutional review |
|-----------------------|-----------------|---------------------------------|------------------------------|--|
| W. Jaruzelski | 1989-1990 | 1 | 1 | 1 |
| L. Wałęsa | 1990-1995 | 35 | 24 | 8 |
| A. Kwaśniewski | 1995-2000 | 21 | 11 | 13 |
| A. Kwaśniewski | 2000-2005 | 23 | 24 | 12 |
| L. Kaczyński | from 23/12/2005 | 0 | 0 | 0 |

¹⁴ See the judgment of the Constitutional Tribunal of 26/01/1993 in case U 10/92 (OTK [The Official Collection of the Jurisprudence of the Constitutional Tribunal] 1993/2).

¹⁵ Source of the statistical data: <www.prezydent.pl> (the official website of the Polish President) and T. Słomka, *supra* n. 5, at p. 202.

FORMING A GOVERNMENT

The creative function of the *Sejm* concerns primarily the appointment and dismissal of the Government. The mechanism of government formation is, despite many simplifications when compared to the corresponding regulation under the *Interim Constitution* of 1992, still considerably complex. The mechanism, which in certain circumstances might comprise as many as three phases and which is described in Articles 154 and 155 of the Constitution, reflects the fact that the constitutional designers were disposed to create a mechanism that would correspond to the general structure of government as entrenched in the Constitution.

In the first phase, the Government is formed by the President who designates the President of the Council of Ministers after comprehensive political consultations with the representatives of all political forces in the lower chamber of Parliament. The President of the Council of Ministers nominates the (other) members of the Council of Ministers and the President of the Republic appoints the President of the Council of Ministers along with the other members of the Government within 14 days of the first session of the Parliament after elections (or within 14 days after accepting the resignation from office of the former Council of Ministers). Upon their appointment, the members of the new Government take an oath of office in the presence of the President of the Republic. Within 14 days of the Government's appointment, the President of the Council of Ministers presents the *Sejm* with a Government programme and makes a motion that the *Sejm* pass a vote of confidence in the Government. For the *Sejm* to adopt a vote of confidence, it is required to muster the absolute majority of votes in the presence of at least half of the statutory number of Deputies. In the event that the Council of Ministers fails to obtain the vote of confidence, the procedure proceeds to the second phase of Government formation.

In this second stage, the initiative belongs to the *Sejm*. The lower chamber chooses the President of the Council of Ministers along with the other members of the Government by an absolute majority of votes in the presence of at least half of the statutory number of Deputies. The President appoints such a Government to office and receives an oath from its members. Should this procedure of Government formation fail, the Constitution provides for a third and final procedure.

In this third phase, the President nominates the President of the Council of Ministers who proposes the other members of the Council of Ministers, and the President of the Republic appoints this Council of Ministers within 14 days. Subsequently, the *Sejm* is required to pass a vote on a resolution of confidence in the Council of Ministers within 14 days of its appointment. The adoption of the resolution requires a simple majority of votes in the presence of at least half of the statutory number of Deputies (Article 155(1) of the Constitution). If the Government fails to obtain the vote of confidence, the President dissolves the *Sejm*

(which entails the dissolution of the upper chamber as well) and orders elections to be held (Article 155(2) 2 of the Constitution).

The Constitution also provides for the power of the President to dissolve Parliament in another situation: when the *Sejm* fails to pass a State Budget bill within four months of the day the bill was introduced by the Government. It should be noted, however, that in this instance the President's competence to dissolve Parliament is discretionary and thus differs from the obligatory order of dissolution in the case of a failure to form a Government in the last of available procedures.¹⁶

POLITICAL ACCOUNTABILITY

The formation of Government is not a unilateral process and involves interplay of Parliament and President. It is rudimentary thus to explore the corresponding structure of political and constitutional responsibility.

Political accountability takes two forms under the Constitution. Ministers are collectively accountable to the *Sejm* for the activities of the Council of Ministers and individually within the scope of their responsibility (Article 157 Constitution). A construction that is novel in the Polish constitutional system, however, is the institution of a constructive vote of no-confidence. The institution of the constructive vote of no-confidence draws on the German model and requires the *Sejm* to express no-confidence in the Council of Ministers by a majority of the statutory number of Deputies of the *Sejm* (i.e., by a majority of at least 231 votes). There are, however, in fact two other prerequisites for the motion to have legal effect. The motion needs to be moved by at least 46 Deputies and requires additionally that a candidate Prime Minister be specified in the motion. If such a vote of no-confidence obtains the required majority in the *Sejm*, the President of the Republic has to accept the resignation of the Council of Ministers and to appoint the Prime Minister proposed in the motion. On the new Prime Minister's submission, the President appoints the other members of the Council of Ministers and accepts their oath of office (Article 158(1) of the Constitution).

¹⁶ The way of counting this four month period appeared recently to be a source of serious political disturbances. The budgetary initiative was submitted by the government before the parliamentary elections on 30/09/2005 and then again (with some minor changes) by the new government on 19/10/2005. The Parliament managed to pass it finally on 15/02/2006, so more than 4 months after the September submission but less than 4 months after the October one. As there were controversies whether the rule of not-discontinuation of the parliamentary work after the elections applies also to the budgetary bill, President L. Kaczyński was seriously considering the possibility of dissolving Parliament, taking into consideration that 4 months after the elections there was still no government coalition. After signing a so-called 'stabilization pact' by three of the political parties, which agreed to co-operate in certain matters and to some extent to support the minority government, President L. Kaczyński announced in a speech delivered on public TV that he decided not to make use of this possibility (the text of the speech is published in: *Gazeta Wyborcza* No. 38/2006 from 14/02/2006, p. 3).

The constructive vote of no-confidence was incorporated into the Constitution as a consequence of the damaging experiences of the first part of 1990s when the political environment was volatile. This inspired concerns regarding the stability of the executive (Government). As it turned out, the instrument is in fact a major factor contributing to the durability of governments despite the splitting of parliamentary coalitions. The observation seems to be true regarding the last two terms of the *Sejm*. The Government can therefore persist against all odds as long as it finds the minimal critical support for its proposals to legislate. Once in office, the Government cannot be changed until the distribution of power within the *Sejm* yields the required majority for a successful constructive vote of no confidence (the same applies to votes of no-confidence in respect of individual ministers). Governments thus seek to elicit support from the largest parliamentary group (which may well not be its own) as well as from independent MP's. The experiences of the last two terms of Parliament warrant the observation that it is difficult to overthrow a Government since it is always difficult to gather enough votes to pass a constructive no-confidence resolution. However, the effective resilience of Governments that lack the essential backing in the chamber is unproductive. The very construction thus seems to disappoint many of its authors.

Ministers are accountable individually for all matters that fall within the scope of their responsibility as well as matters delegated to them by the Prime Minister. The *Sejm* can pass a vote of no-confidence in a minister if a motion to that effect is moved by a group of at least 69 members of the lower chamber. If such a vote of no-confidence is accepted by a majority of the statutory number of members of the *Sejm*, the President dismisses the minister. Ministers are also responsible to the Prime Minister in so far as the President has to follow the Prime Minister's suggestions when effecting changes in the membership of the Council of Ministers (Article 159, 161 of the Constitution).

The President is not politically accountable to Parliament or any other body and may be dismissed before the end of the term only by means of his constitutional responsibility (see below). As already mentioned, most of the official acts of the President, with the exception of 30 prerogatives listed in the Constitution, require the countersignature of the Prime Minister who thus takes over all political responsibility to Parliament and is answerable politically to the *Sejm*. According to the practice established in the mid-1990s, the Chancellery of the President requests the signature of the Prime Minister before the act is signed by the President himself, which enables them to solve potential conflicts in a diplomatic way and creates the impression that the co-operation between the parts is smooth.¹⁷ If

¹⁷ In fact, there was only one serious crisis connected with the countersignature after 1989. In February 1995 Prime Minister W. Pawlak refused to sign the act of President L. Wałęsa appointing J. Zólkowski to the post of the Ministry of Foreign Affairs due to his powers conferred in the Small

the Prime Minister refuses to give his counter-signature, he is not presumed to resign from office, because he cannot be dismissed by the President; only the *Sejm* can do so.¹⁸

CONSTITUTIONAL ACCOUNTABILITY

Political accountability aside, the Constitution also spells out the main principles and some detailed provisions of constitutional responsibility. Constitutional responsibility is assigned to the President, members of the Government and other persons holding offices mentioned in Article 198 of the Constitution. The President can be held accountable before the Tribunal of State for infringements of the Constitution or an Act of Parliament as well as for any offence committed in the exercise of office. The *impeachment* procedure concentrates primarily in Parliament. To bring an indictment against the President of the Republic, a resolution of the National Assembly passed by a majority of at least two-thirds of the statutory number of members of the National Assembly is required. The motion to hold a vote on the resolution must be moved by a group of at least 140 members of the National Assembly (Article 145 of the Constitution) which makes the procedure not really likely to be used unless there is a serious political and constitutional crisis.¹⁹ It is important to note that the accountability before the Tribunal of State is the only form of responsibility for the exercise of the President's prerogatives.

EVALUATION

Against the backdrop of the foregoing overview of the government structure in Poland, it is possible to make the following observations:

Constitution of 1992. J. Ziółkowski did not become minister and W. Pawlak did not resign as Prime Minister. For the legal evaluation of the countersignature mechanism at this time of crisis see: M. Kruk, 'Kontrowersje wokół instytucji kontrasygnaty na tle przepisów Małej Konstytucji, Księga Pamiątkowa ku czci prof. J. Zakrzewskiej' [Controversies Concerning the Countersignature Mechanism in a Small Constitution. Book Dedicated to Professor J. Zakrzewska] (Warsaw 1996) p. 378, A. Frankiewicz, 'Zagadnienie kontrasygnaty aktów urzędowych Prezydenta RP w dyskusji komisji konstytucyjnej Zgromadzenia Narodowego w latach 1993-1997' [The Problem of Countersignature of the President's Official Acts in the Constitutional Discussion of the National Assembly in the Years 1993-1997], *Przegląd Sejmowy* No. 4/2000, p. 23-46.

¹⁸ Otherwise that would be a kind of *de facto* political responsibility of the Prime Minister to the President, contrary to the 'philosophy of the constitution' (S. Patryra, 'Uwagi o nowym kształcie kontrasygnaty w Konstytucji z 2 kwietnia 1997 roku' [Remarks on the New Counter-veto Mechanism in the Constitution of 2nd April 1997], in *Konstytucyjny ustroj państwa. Księga jubileuszowa Profesora Wiesława Skrzydło* [Constitutional System of the State. Book Dedicated to Professor Wiesław Skrzydło] (Lublin 2000) p. 219; A. Frankiewicz, *Kontrasygnata aktów urzędowych Prezydenta RP* [Counter-signature of the President's Official Acts] (Zakamycze 2004) p. 199).

¹⁹ Garlicki, *supra* n. 2, at p. 275.

A. The designers of the system of government of Poland were not in a serious quandary because the available options did not span from the presidential to the parliamentary-cabinet model. Rather, the dilemma concerned how to establish the *rapport* between the President, the Government and Parliament (in all their possible interrelations) *within* the parliamentary-cabinet model of government. The Polish Constitution seems to have developed out of a compromise also in this respect. The provisions approaching the parliamentary model are dominant, but in fact the Polish political system as a whole does not comply with any of the classical (theoretical) models of government, be it parliamentary, presidential or even semi-presidential.

B. The compromise hammered out in the constitutional process seems to turn around two postulates. The primary concern was to preserve the powers of the *Sejm*. The Senate is a second chamber of Parliament but does not constitute a counterforce to the lower chamber (its electoral constituency as well as powers are different; the Polish construction is thus described as ‘disproportionate bicameralism’). Secondly, the Constitution provides for a mechanism of co-operation between the legislature, the executive and judicial authorities. The co-operation consists not only in the pre-emption of constitutional conflicts, but also in the harmonious resolution whenever such conflicts arise. The system has been in place for nearly nine years and has operated smoothly; nothing of a constitutional crisis has been on record. It seems correct to conclude that the Constitution provides for a rational relationship between the major participants of the political process.

C. It was in no way problematical or agonising – in terms of political effort – to discard the presidential model. The decision to adopt a parliamentary system of government seems to have arisen out of two major premises. Primarily, it was the Polish constitutional tradition that pivots on the principle of popular sovereignty and thus emphasises the special character of Parliament. Secondly, it should be argued that the choice was made in view of the fact that the political party system was not thriving at the time. A robust party system is a prerequisite of all rational and effective governance in a democracy; it is a *conditio sine qua non* when it comes to a parliamentary system of government. The development of the Polish democratic system of government can be interpreted to verify the thesis that the proportional electoral system, as well as the development of parliamentarianism and of the rudiments of civil society go synergistically hand in hand.

D. It is difficult to approximate the structure of government in Poland to any of the traditional theoretical models. This, however, is not characteristic of Poland alone. It is a fact that the characteristics identifiable with the parliamentarian

model prevail which allows for a conjecture – which is in no way a wild guess – that the system is a variation of the parliamentary-cabinet government model (or *rationalised parliamentarianism*). This structure of government allows for a considerable amount of innovation in constitutional practice. In particular, the office of the President can accommodate more than one approach. The President can influence the political landscape through political arbitration or through the sheer authority of the office. There are other lines of attack available to the President who can make use of ‘hard’ instruments provided for in the Constitution, such as the legislative veto, right to initiate the constitutional control of the legal acts before the Constitutional Tribunal or activity in the area of internal and foreign policy, which is where the powers of the Government and of the President intersect. ‘Constitution in action’ is an offshoot of many factors, such as the personalities of the President and the chief of Government, their leadership styles, their understanding of the *raison d’état*, the vigour of their political resources, their popularity within the society, their social communication skills, *etc.* The same dynamic characterises the evaluation of the quality of politics or of persons in public offices. Every state of affairs in the country thus should be considered as a litmus test of the essentials of the Constitution as a document of the highest importance in terms of both legal structure and political governance.

E. The most distinctive feature of the Constitution’s model of government lies in the strengthened structural position of the Prime Minister. The Prime Ministerial muscle finds its reflection in the competence to nominate the ministers, control the Government, and co-ordinate the activities assigned to individual ministers. It is no accident that the very existence of the Cabinet is in the hands of the Prime Minister who freely can decide for the Council to resign from office (though the resignation requires acceptance by the President).

F. The President’s role in the government is defined by presidential competences entrenched in the Constitution as well as the President’s actions as a political arbiter, though these actions lack instruments of sanction. Political arbitration, however, seems particularly adequate to give substance to the constitutional-political construction of the presidential office that can be inferred from the duties of the President as inscribed in the Constitution (the President’s duties are to guarantee ‘the continuity of State authority’ as well to ensure ‘observance of the Constitution, safeguard the sovereignty and security of the State’). The role of the President in the government of the country thus depends on the structure of political forces in the State, and the President’s ability to make use of the presidential prerogatives as well as the authority – defined in constitutional and, above all, sociological terms – of the Head of State.

G. The reinforcement of the position of the Prime Minister to the detriment of former presidential competences cannot be seen as a major modification of the powers of Parliament. Parliament remains the residue of popular sovereignty and the fundamental representative of the nation: representative democracy is the basic model whilst direct democracy in Poland is limited to the referendum and the legislative initiative of citizens.

CONCLUSION

In sum, it is fair to say that the Polish model of central government converges mostly towards the parliamentary-cabinet model with a robust position of the Prime Minister. The German chancellor certainly can be considered as the model for the extended executive powers vested in the Prime Minister. It is essential, however, to note that the office of the President in Poland is significantly different from the German presidency. Furthermore, it is difficult to overlook the similarity between the Polish Prime Ministerial (Chancellor) model and the British model of parliamentary-cabinet system (save perhaps for the power to dissolve the parliament, which is at the discretion of the Prime Minister at Westminster and the multi-party political environment in Poland). It would be implausible to say, however, that the Polish structure of government departs from the theoretical (doctrinal) models of systems of government so as to create a new quality. There is no way to argue that the model amounts to a special type of democratic government. The structure of government in Poland falls within the spectrum of possible allocations of powers as between the legislature, the executive and the courts (though the powers of courts and tribunals were not subject of this study) as well as all the possible interrelationships between them. If the notion of osmosis can be applied to systems of government, it would capture the essence of the history of constitutionalism at the end of the 20th century and the Polish process of democratisation is in accordance with these developments. The fundamental structure of government in Poland certainly coincides with the European institutional free drift of the system of parliamentary-cabinet government. It is nothing of a semi-presidential bright star.

