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## Transformations in the Mechanisms of Government

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### Changes in the system of the communist rule

In Poland, the year 1989 is the borderline year, a *sui generis* caesura of the transformation taking place in the process of building a democratic state of law based on the freedom of articulating and aggregating the political views, where the relations taking place between the organs of the public authority and an individual as well as the latter's relationships are described by law and executed within the frameworks of the legal regulations. It was then that the monopoly of the communist party (The Polish United Workers' Party – PZPR), including the supremacy of the communist party over the organs of the public power, in the state's political system was legally and factually broken. Breaking the domination of the communist party was neither a planned nor a singular event. It proceeded in a complex process spread over time which included transformations of inner dynamics and whose effect in the form of constitutional and other political changes that took place in 1989 was a surprise for the major participants in the political relations both from the spheres of the *ancien régime* and the political opposition. Instead of the planned process of cooptation a part of the opposition members<sup>1</sup>

<sup>1</sup> Cf. A. Materska-Sosnowska, *Okragły Stół po dwudziestu latach. Stan dyskusji politycznej*, [in:] A. Materska-Sosnowska, T. Słomka (eds.), *Czas próby. Polski przełom polityczny roku 1989*, „Studia Politologiczne” 2009, Vol. 15, p. 119.

to the ruling elite what was achieved was the effect of a political change, with an included, though not assumed and even undesired by the ruling elites, mechanism of alternation of power.

The break-up of the monopoly of the communist party in 1989 was preceded by a set of events and processes indicating a proceeding decomposition of the communist party and the loss of its control over the political, economic and social processes taking place in Poland. The economic crisis and mass strikes generated the social and political crisis. The challenge was to keep the power and simultaneously find the social justification for it. For this reason, the progressing economic collapse radiating onto the spheres of social and political relations was accompanied by the activities aimed at holding back this process and keeping, if not the monopoly (which was not prejudged), then the dominating and unquestionable role of the communist party in the relations between the authorities and the façade political participation of a part of the opposition that existed then. As a result, the program of necessary changes, planned, realized and controlled by the communist party, would be legitimized by a part of the then opposition<sup>2</sup> and thus accepted by big social groups. Involving the leaders of the opposition social forces would serve legitimization of the system and, what is more, would disintegrate the political opposition, depriving it of the leadership and would block the possibility of the opposition appearing as an alternative to the inefficient communist party.

Another concept analyzed by the communist authorities was to modify the party system and supplement it with a *quasi* opposition in the form of a concession Christian Democratic party which would work besides the Peasant Party<sup>3</sup>, the concession craftsmen party<sup>4</sup> and equally façade organizations of lay Catholics. Because the hierarchs of the Catholic Church and the opposition circles did not show any interest

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<sup>2</sup> For example, with the aim of political neutralization of the opposition leader Lech Wałęsa, the latter was offered to become a member of the Consultative Council by the Chairman of the Council of State, General W. Jaruzelski. Through the political façade of the Consultative Council, the opposition elites, including the Catholic ones, were expected to join the state's decision-making organs and in this way support the activity of the authorities. It was for this reason that the great part of the invited persons (including Lech Wałęsa) refused to join the Council. More on this subject, see P. Kowal, *Koniec systemu władzy*, Warszawa 2012, pp. 95 ff.

<sup>3</sup> The United People's Party – ZSL.

<sup>4</sup> Democratic Party – SD.

in it, the concept fell. A similar failure was the work on creating new, pro-government trade unions and social organizations.

An important impact on the dynamics of changes taking place in Poland was exerted by the positive reactions of the Soviet authorities. They agreed to the proceeding transformations in the political system of the state on condition that they should serve the maintenance of the internal order and that they should not negate cooperation with the USSR. That is why, at least since 1988, the Russians started to seek contacts with various circles of the Polish opposition, seeing them as potential partners<sup>5</sup>, and in the middle of 1989 they accepted the possibility of the opposition taking over the power.

In the period when the communist elites were seeking agreement with a part of the political opposition, the means of coercion or the measures to devalue the political opponent were applied, typical of the communist rule and making the foundation of the power. Invigilation activities were extended and intensified. Beginning with April 1988 plans to introduce martial law were developed and analyzed in the ministries of the Interior and the National Defense. Differences among the opposition leaders were created and strengthened, particular opposition circles were increasingly broken up, operational activities aimed at priests were started, financial penalties were applied, administrative measures were used, etc.

A characteristic feature of the process of programming, preparing, realizing and controlling the political change was subordination not to the inner groups of the communist party or the Sejm, but to the Minister of the Interior (general Czesław Kiszczak), who in this sphere closely cooperated with the First Secretary of the Central Committee of PZPR – general Wojciech Jaruzelski. He was the *spiritus movens* of the whole undertaking of legitimization of the political reform through coopting a part of the opposition elite to the ruling elite. The next important analytical body which developed the tactics towards the opposition (including the current activities during the Round Table Talks) was the so-called group of three. Its members included general Władysław Pożoga (head of the Intelligence Service of the Ministry of the Interior), Stanisław Ciosek (secretary of the Central Committee of PZPR, in the past responsible for contacts with the trade unions) and Jerzy Urban (the press spokesman of the government).

An important factor which determined the possibility of achieving consensus between the communist regime and a part of the political

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<sup>5</sup> Cf. A. Dudek, *Historia polityczna Polski 1989–2005*, Kraków 2007, p. 13.

opposition (so-called constructive opposition<sup>6</sup> contrasted with the opposition acting for breaking up the supremacy of the communist party) was the choice made by the communist authorities of the partners in talks. He was selected by the Minister of the Interior and checked by the partners in talks. In this way, the problem itself of contracting an agreement was determined. The agreement was aimed at by all parties making the settlements and harmoniously acknowledging that it would be based on the solutions honoring the dominating role of the communist party in the state's political system, and rejecting competitive elections<sup>7</sup>. Within the frameworks of so outlined boundary conditions of the agreement, the issue that remained to be settled was its content. What is characteristic, in this sphere the opposition was significantly divided in respect of a number of problems, which made it easier for the government to conduct negotiations.

## **The Round Table**

The talks of the Round Table, as a form of seeking agreement between the ruling powers and the so-called constructive opposition, were commenced on 6 February 1989 and closed on 5 April 1989. They were conducted in numerous groups and sub-groups, totally comprising 452 people. Nevertheless, the most important issues were settled at confidential meetings of the leaders of the negotiating sides, which took place in the centre of the Ministry of the Interior in Magdalenka. The talks of the Round Table resulted in far-reaching, multi-aspect decisions. Their axis was supposed to be holding partly competitive, but not confrontational elections to the parliament, which would introduce a part of the opposition into the system of government, without simultaneously undermining the dominating role of the communist party. An important consequence of the decisions of the Round Table was changing the relations existing between the communist party and the bodies of the state authority. They reduced the possibility of the party deciding on state matters, giving the decisive voice to the constitutional bodies of the state<sup>8</sup>.

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<sup>6</sup> At the end of the communist Poland the name of a constructive opposition was given to that part of the opposition which spoke for making an agreement with the communist party.

<sup>7</sup> Cf. P. Kowal, *Koniec systemu...*, pp. 345–346.

<sup>8</sup> Cf. *ibid.*, p. 466.

## Legal realization of the Round Table decisions

The decisions of the Round Table found their normative realization in the legal regulations passed by the Sejm. The first one was the law on amendments to the Constitution, which was accepted already 2 days after the talks of the Round Table were finished – on 7 April 1989<sup>9</sup>. One of the effects of the law from 7 April 1989 was that the term of office of the Sejm elected in 1985 was shortened. On that same day the Sejm passed the electoral law to the Sejm of the 10<sup>th</sup> term and the electoral law to the Senate.

It is characteristic that the reform of the political system was started with the changes in the mechanism of governing, and not with changing the political axiology of the state, i.e. the values the realization of which is supported, for example, by a given system of relations in the government. In other words, a new organization of the state authority corresponded to the system of political values specific for the communist state and that new organization was supposed to realize those values.

Concerning the personal composition of the future Sejm, in each constituency (108 constituencies, where 2 to 5 deputies were elected) a division of 425 mandates was made in advance into the government groups and independent candidates. The other 35 mandates were to be taken from the so-called national list where only prominent figures of the government side were found. The government side got guarantees for obtaining 65% of seats in the Sejm (including PZPR – 37.6%, ZSL – 16.5%, SD – 5.9%), while 35% of the seats in the Sejm were to be filled in free, competitive elections. The choice of 65% of deputies among the candidates presented by the *ancien régime* was supposed to be a guarantee to control the work of the Sejm. On the other hand, 35% of the seats in the Sejm filled in actual elections allowed to plant opposition in the Sejm and thus in the central system of the political power, opening the possibilities to extend the parliamentary opposition in the future.

The formation of the Senate (composed of 100 senators) was stipulated as the second chamber of the parliament, in whole elected in the way of free elections. Free elections to the Senate were expected to be a compensation for the opposition for the contract elections to the Sejm and the office of the president for General W. Jaruzelski. At the same time, however, no concept of the second chamber of parliament

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<sup>9</sup> T. Moldawa, *The Constitution of the Republic of Poland*, [in:] S. Sulowski (ed.), *The Political System of Poland*, Warsaw 2007, p. 29.

was worked out, which meant that it was (and still remains) an organ politically unfinished, which would affect the future. 100 senate mandates were divided among 49 constituencies, assigning 2 mandates to each of 49 provinces, with an exception of warszawskie and katowickie provinces, with 3 senators elected in each.

Both the Sejm and the Senate elections were according to the majority rule. A deputy (senator) was the person who in the first ballot obtained more than 50% of valid votes. If the first ballot did not bring any settlements, then those two candidates who obtained the biggest number of votes took part in the second ballot to the Sejm elections. At the same time in the Senate elections twice as many people as there were unfilled seats could run for elections in the second ballot. The winners to the Sejm and the Senate elections became, respectively, a deputy and a senator.

Free Senate elections, which were connected with some uncertainty about their results, correlated with the Senate's secondary competences towards the Sejm. Amendments proposed by the Senate to the bills passed by the Sejm could be approved of by the Sejm with a simple majority of votes or rejected with the majority of at least 2/3 of votes, which generated the risk of legislative stalemate, i.e. a situation could appear when the Sejm neither approved nor rejected the Senate's propositions. The Senate did not participate in appointing the government and nor did the government bear responsibility before the Senate.

The formation of the Senate was connected with the formation of the office of the President (partly, in the place of the Council of State as the so-called collective head of state), who was to become General Wojciech Jaruzelski. The President was elected for a 6-years' term of office by the Sejm and the Senate, joined into the National Assembly, which – considering the parity of seats negotiated in the Sejm – guarantees the predictability of the choice and protected it from unforeseen events. Above all, for this reason general presidential elections were not possible. It was rationally estimated that – assuming the democratic character of elections – General W. Jaruzelski could not be elected president according to this procedure. On the other hand, his election was ensured by the political elites, both those that were in the government and the opposition.

The president's function was to see to it that the constitution was abided by, to safeguard the sovereignty and safety of the state, inviolability and integrity of its territory and, what was of key importance in the conditions of the concluded political agreement, the abidance of

international political and military alliances. That meant that above all the President had to be a warrantor of the alliance with the USSR and other socialist states within the frameworks of the Warsaw Treaty and the Council for Mutual Economic Assistance as well as a guarantor of the socialist system of the state. Directly in connection with the assigned political roles of the President, the political accountability of the Sejm to him was introduced. If the President should decide that the Sejm passed a law or a resolution making it impossible for him to perform any of the above functions, he could (after seeking the opinion of the Marshal of the Sejm and the Marshal of the Senate) dissolve the Sejm (which, by virtue of the regulations of law resulted in dissolving the Senate). Thus, General Wojciech Jaruzelski as the President was supposed to become a guarantor of the non-revolutionary character of the changes taking place in the state, their character and dynamics as well as fully control all decisions made in the parliament.

The President had the right of legislative initiative, the legislative veto, which the Sejm could break with the majority of at least 2/3 of votes in the presence of at least a half of the statutory number of deputies. Both before and after signing the bill he could make a motion in the Constitutional Tribunal to declare its incompatibility with the Constitution<sup>10</sup>. He appeared in the Sejm with a motion to nominate or remove the Chairman of the National Bank of Poland, which – in turn – allowed him to influence the monetary policy of the state.

By virtue of the amendment to the Constitution of 7 April 1989, the President dominated in the process of appointing the government and its work. He was the only subject to appear in the Sejm with a motion to appoint the President of the Council of Ministers. The Sejm had the right not to appoint the candidate indicated by the President (which did not happen), but it could not appoint a person who was not proposed by the President. In the process of appointing the cabinet, the President's motions concerning the composition of the government could not be presented to Sejm until they were agreed on with the President. This meant that the Sejm could not appoint the Council of Ministers without the President's acceptance. If the Sejm did not appoint the government for 3 months, then the President could dissolve the Sejm and the Senate and announce new elections. In case of an argument between the head of state and the first chamber of the parliament regarding the appointment

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<sup>10</sup> J. Zaleśny, *Partycypacja głowy państwa w ostatnich etapach procesu legislacyjnego*, Warszawa 1999, pp. 112ff.

of the government, the President, who was a party in this argument, stopped this argument himself by referring to the will of the sovereign.

In matters of special importance the head of state could call the sittings of the Council of Ministers and preside over them. In this way he could influence the choice of priorities established by the government, the dynamics of the ongoing work or the content of the decisions taken. Although that was not the decisive voice, the Council of Ministers could not disregard it.

Until the introduction of the local self-government in 1990, the President had control over the national councils, which were a form of realizing the central power locally.

The President was the head of the Military Forces; he presided over the Committee of the State's Defense, which was a body competent in matters of the state's defense and security. The President could introduce martial law in a part or the whole territory of the state if it was necessary due to the defensive capability or the exterior threat to the state's security. For the same reasons, he was competent to declare general or partial mobilization. For a period no longer than 3 months, he could introduce the state of emergency in a part or the whole territory of the state in case of a threat to the state's interior security or in case of a natural disaster.

The April amendment stipulated that it would be determined by virtue of a law which important legal acts of the President required the countersignature of the Prime Minister. It is a matter of significance that till autumn 1992 no such law was passed. Thus, in reality the President could act freely within the frameworks of the competences he possessed, without the necessity of seeking the Prime Minister's consent.

The Council of Ministers was accountable for its work before the Sejm, and between the terms of the Sejm – before the President.

## **The elections from June 1989**

The landmark which changed the dynamics of the political transformation and which undermined the essence of the Round Table compromise was the result of elections to the Sejm and the Senate from 4 and 18 June 1989<sup>11</sup>. On 4 June, 62% of those entitled to vote participated

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<sup>11</sup> Security Services were actively involved in the election campaign to the Sejm and the Senate. They massively invigilated the Solidarity movement workers. They informed

in voting. The elections took the form of a plebiscite of support for Lech Wałęsa and his team<sup>12</sup>. It was for the first time during the last 50 years that Poles could not only vote but also could choose freely in the Sejm elections. As for the Senate elections, the choice was still limited. On 4 June 1989, in the first ballot to the Senate, 92 mandates were obtained by the opposition candidates, while 8 others entered the second ballot. The government side, on the other hand, did not fill any seat in the Senate in the first ballot. In the first ballot of the Sejm elections, due to the fact that the condition to appoint a candidate for the seat was to obtain at least 50% votes from the 65% of mandates for the government forces, only 3 deputies were elected, while from the 35% of mandates for free competition, 160 opposition deputies were elected (out of 161 possible to be elected). From the national list, from which the leaders of the communist party stood for election, 33 lost out of 35 candidates. That meant that – unexpectedly for the decision makers – in the act of voting the Poles unexpectedly rejected the candidates of the *ancien régime*, thus confirming that the latter did not have any democratic legitimization in shaping the behaviors of big social groups, and the compromise of the political elites established at the Round Table a few weeks before had lost its political authorization. In the procedures proper for direct democracy, the sovereign distinctly indicated that not so much a reform of the system was necessary but its change, based on the institutions characteristic of representative democracy. As a result of the June elections it became obvious that the political system of Poland binding so far ceased to be in force<sup>13</sup>.

On 18 June 1989, only 25% of those entitled to vote took part in the second ballot, where practically only the candidates from the pool meant for the government groups were elected. Also, through absence in the voting the Poles showed that it did not matter to them which communist forces would sit in the Sejm.

The effect of elections to the Parliament and its recognition by the government provided the basis to develop and deepen the process of political transformation already in other boundary conditions than

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the communist authorities on the activity of the Solidarity candidates and blocked the initiatives that were unfavourable for the communist party and its allies.

<sup>12</sup> Cf. M. Mistygacz, *Okrągłostołowy kontrakt społeczny: założenia, cele, skutki*, [in:] *Czas próby. Polski przełom polityczny roku 1989*, „Studia Politologiczne” 2009, Vol. 15, A. Materka-Sosnowska, T. Słomka (eds.), p. 155.

<sup>13</sup> M. Kruk, *Parlament w dobie transformacji*, [in:] M. Kruk, J. Wawrzyniak (eds.), *Transformacja ustrojowa w Polsce 1989–2009*, Warszawa 2011, p. 59.

before. That happened because by way of voting (which was especially well visible in the Senate elections), the political change got politically legitimized by big social groups. The opposition leaders did not take advantage of that option. Their standpoint was to fulfill the decisions made at the Round Table, which was encouraged by the leaders of the *ancien régime*, who at the same time threatened with the possibility of annulling the elections and apply other repressions<sup>14</sup>.

The defeat of the communist party and the satellite parties questioned the possibility of electing General W. Jaruzelski – a symbol of the repressive communist rule – to the office of the President. In that situation, the leaders of the communist party clearly emphasized that not electing general W. Jaruzelski to the president's office threatened with destabilization and would end the process of political changes. The "Solidarity" movement members of the Parliament were encouraged to choose General W. Jaruzelski by the "Solidarity" leaders, with L. Wałęsa, B. Geremek and A. Michnik at the head. On 17 July 1989 the National Assembly, with the majority of one vote, elected General W. Jaruzelski for the office of the President<sup>15</sup>. It was not only the very result of the voting that caused confusion of the communist party but also the distribution of votes. Due to the fact that the voting was open, it was possible to find out that a part of parliamentary members from the government side (6 from the United People's Party – ZSL, 4 from the Democratic Party – SD, 1 from PZPR) voted against General W. Jaruzelski, while 4 others (3 from ZSL and 1 from PZPR) did not take part. Thus, General W. Jaruzelski was elected owing to the support of a part of the opposition. The choice with the majority of one vote affected the way the President worked since he took advantage of his competences only moderately.

An important sign of the breakdown of the domination of the communist party in the state's political structures was the increasingly intense phenomenon (which had already appeared during the Round Table talks) of distinguishing the satellite political parties (ZSL and SD) from PZPR. The former started to articulate their own aspirations, different from the intentions of the communist party. Reasons of emotional nature were also significant, including the way they were subordinated to and dependent on PZPR. After the elections of June 1989, the satellite

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<sup>14</sup> A. Dudek, *Historia polityczna Polski 1989–2005*, Kraków 2007, pp. 38–39.

<sup>15</sup> 544 (out of 560) Sejm and Senate deputies took part in the voting. 270 among them voted „for, 233 „against”, 34 „abstained”, while 7 cast invalid votes.

parties saw the possibility of obtaining the political subjectivity and independence of action, which they took advantage of. Surprisingly for the leaders of PZPR, they rejected the alliance with PZPR and started to cooperate with “Solidarity”, which resulted in the formation of a coalition government headed by one of “Solidarity” leaders, Tadeusz Mazowiecki – with a considerable participation of representatives of ZSL and SD, as well as with the participation of PZPR, whose members held the Ministry of the Interior and the Ministry of the National Defense<sup>16</sup>.

For the first months of its functioning, the government headed by Tadeusz Mazowiecki enjoyed the support of all parliamentary fractions (including the communist party), which never happened to any government in the years to come. The feeling of the exceptional character of the historical moment caused that in the Parliament he had the full power to enforce his will. Adopting the strategy of self-limiting the scale of his victory, he used it only in part. For example, in 1990 communists still held the neuralgic places in the government administration, censorship still existed, while the secret services massively destroyed the documents confirming the criminal activity of the communist secret services and the agentural activity of some members of the political opposition.

## Changing the state’s axiology

What in spring of 1989 still had the features of a rational compromise, a few months later became something anachronistic and not adjusted to the expectations of big social groups and to the changes taking place in the international environment. As a result, on 29 December 1989 another amendment – as crucial as that of April – was made to the constitution of 22 July 1952. This time, it referred to the political and economic systems of the country and it adopted the values characteristic of a democratic state of law. On the symbolic level, the name of the state was changed from the Polish People’s Republic to the traditional one, the Republic of Poland. Referring to the tradition, the state’s emblem was made an image of a white eagle in a crown on the red background. A principle was introduced that the Republic of Poland was a democratic state of law, realizing the rules of social justice. The collective subject

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<sup>16</sup> It should be emphasized that a part of the Solidarity leaders (B. Geremek, A. Michnik) supported another coalition, namely between „Solidarity” and PZPR, with a marginal presence of ZSL and SD representatives in the government.

of the sovereign state power was the nation. Political pluralism, with the characteristic freedom of establishing political parties and their activity, was proclaimed in the place of the leading role of PZPR. Freedom of economic activity, regardless of its form of ownership, was guaranteed. This freedom could be limited only in a law. Protection of ownership, the right of inheritance as well as full protection of personal property were declared. Expropriation was allowed, but only for public purposes and for the fair compensation.

## **Modification of presidency**

In the spirit of changes marked in 1989, legal transformations were effected in successive years. Their aim was to deepen and strengthen the processes started with the decisions of the Round Table. The fundamental change of the internal and external political conditions of the country undermined the political basis of the role performed by General W. Jaruzelski as President. He became the warrantor of the stability of something that proved to be anachronistic and what broke down. Although he did not fully use his competences, he was perceived as the symbol of the communist rule in its repressive form of martial law<sup>17</sup>. Considering the objective conditions, General W. Jaruzelski resigned from the office of the President.

The problem of a lack of adjustment of the procedure of electing the President and the tasks he realized was perceived parallel to the motive of the President's resignation. The President, who determined the architecture of the political order, was appointed by the National Assembly, which meant that the latter had political legitimization from the Parliament; however, it was inadequate to the tasks that he was entrusted with. The calculations of the candidates for the President's office were also of importance. Prime Minister T. Mazowiecki was convinced that in the parliamentary course, L. Wałęsa was unrivalled and he saw an increased chance for the victory in confronting him in general elections. As a result, on 27 September 1990, the procedure of electing the President was changed from parliamentary to general. The first President to be elected according to this procedure (1990) was L. Wałęsa.

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<sup>17</sup> W. Sokolewicz, *Polska droga ku demokratycznej konstytucji (1989–1997)*, „Zeszyty Naukowe Wyższej Szkoły Handlu i Prawa im. R. Łazarskiego, Seria: Prawo” 2003, No. 8, p. 15.

Unlike his predecessor, L. Wałęsa actively used the competences that were available to him as well as the competences that he attributed to himself, which resulted in generally visible, important tensions of competences in such areas of the political relations as control over the army or foreign policy. In the situation of prolonging work on passing a new constitution, on 17 October 1992 provisional solutions, in the form of the so-called Small Constitution – were accepted as a result of a compromise between the deputy fractions and the President. The aim of the Constitution was to temporarily settle the relations taking place between the Sejm, the Senate, the Council of Ministers and the President of the Republic of Poland.

### Seeking *modus operandi*

The so-called Small Constitution of 1992 broke the principle of the unity of the state power, according with which the Sejm was the highest body of the state authority. To replace that principle, the Constitution proclaimed the principle of a division of power into the legislative, executive and judicial powers. The nation exercised its power through its representatives elected to the Parliament, i.e. the Sejm and the Senate. Like in the construction typical of the parliamentary-cabinet system, the President and the Council of Ministers were the state's executive bodies.

The function of the President, elected in general elections, was above all to stabilize the interior and foreign relations, to influence the functioning of other organs of public authority, including first of all the parliament and the government. In the so-called Small Constitution of 1992, the Parliament solved the question of the President's independence in a different way from the act of 7 April 1989 on changing the Constitution. In principle, the President's official acts to be valid required a counter-signature of the Prime Minister or the competent minister, with an exception of the acts enumerated in the so-called Small Constitution (prerogatives). Significantly, acts of arbitral character, for example the legislative veto or dissolving the Parliament, did not need it<sup>18</sup>. Within the frameworks of the solutions typical of the parliamentary-cabinet system, the President was not politically accountable. The Prime

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<sup>18</sup> T. Mołdawa, *Parlament w systemie władz naczelnych Rzeczypospolitej*, [in:] R. Chruściak, T. Mołdawa, K.A. Wojtaszczyk, E. Zieliński, *Polski system polityczny w okresie transformacji*, Warszawa 1995, p. 157.

Minister or the competent minister, respectively, was responsible for his official acts that needed a countersignature. In the field of prerogatives, on the other hand, constitutional accountability, which was realized before the Tribunal of State, was possible on the motion of the National Assembly.

The Prime Minister was obliged to inform the President on the basic problems that the Council of Ministers was concerned with. In matters of special importance to the state the President could call the sitting of the Council of Ministers and preside over it. Of special consequence proved to be the regulation according to which in the process of the government formation the Prime Minister put a motion concerning the appointment of the Ministers of Foreign Affairs, the National Defense and the Interior after having sought the President's opinion. In practice, the President changed this legally non-binding rule of giving opinion on the candidates for those three members of the cabinet into an obligation. That was a departure from the principles of the collective work of the government, the Prime Minister heading its activity and his supremacy over the members of the Council of Ministers. The three politically crucial departments besides (in fact, instead) being subordinated to the Prime Ministers, recognized the President's supremacy over their work and showed disloyalty towards the Prime Minister and the other members of the government. On the other hand, calling off the government depended on the President's will, which meant that the government included the ministers who were not approved of by the Prime Minister but enjoyed the support of the President. For example, the Minister of Foreign Affairs in the government of Prime Minister W. Pawlak pursued his own foreign policy, without settling it with the council of Ministers and the Prime Minister, who was inquired about, made it clear that there was the President's consent to it and the latter would not agree to call off the minister. The *casus* of the Minister of the Interior in the cabinet of Prime Minister J. Oleksy was even further reaching in its consequences. In December 1995, immediately after L. Wałęsa lost the presidential elections, the Minister accused his superior – Prime Minister J. Oleksy – of being a spy of the Soviet and then the Russian secret service, the consequence of which was the fall of J. Oleksy's cabinet<sup>19</sup>.

The Council of Ministers pursued the interior and foreign policy of the state. It controlled the whole of the government administration. It

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<sup>19</sup> The investigation of the prosecutor's office concerning the spy activity did not provide any basis to declare J. Oleksy guilty of the alleged charges and as such was discontinued.

was competent to make decisions in all matters of the state's policy that were not by law reserved for the President or another body of the state administration or the local government. At the same time, however, the President of the Republic of Poland had general control in the sphere of the state's external and internal security and foreign relations, which caused conflicts between the president of the Republic of Poland and the Council of Ministers.

The procedure of calling the Council of Ministers was rationalized. The risk of a stalemate between the President and the Sejm was eliminated when the President designated a candidate for the office of Prime Minister who was not approved of by the Sejm, which – in turn – could not, on their own initiative, choose the Prime Minister. According to the so-called Small Constitution, the leading role in the process of calling the government was played by the President and the Sejm. When the Sejm did not give the vote of confidence to the Council of Ministers appointed by the President, then it could (with an absolute majority of votes) choose the Prime Minister and the composition of the Council of Ministers proposed by the latter. The President had to appoint the government elected in this way and administer the oath of office from him. In case the Sejm could not choose the Council of Ministers, the President appointed the Prime Minister, and on his motion – the Council of Ministers, given the confidence vote by the Sejm by a simple majority vote. If the government was not appointed according to this procedure, the initiative returned to the Sejm, which by a simple majority vote elected the Prime Minister and the composition of the government proposed by him. The President appointed the government chosen in this way and administered an oath of office from them. In case the four attempts to call the government (two initiated by the President and two initiated by the Sejm) failed, then the President either dissolved the Sejm (as incapable of fulfilling its key function of appointing the government majority) or, within 14 days, appointed the Prime Minister and the Council of Ministers for a period of 6 months. In case the Sejm did not give the confidence vote to the government or did not pass a constructive vote of no confidence within 6 months, then the President was obliged to dissolve the Sejm and call for new elections since the situation that arose in the Sejm meant that the latter was not able to appoint any (absolute or simple) government majority and as such lost the *raison d'être* in a given personal composition.

Traditionally, the Council of Ministers was subordinated to the control of the Sejm (e.g. the deputies' interpellations and enquiries,

problem control, vote of acceptance) and was politically accountable to it. Nevertheless, the political position of the Council of Ministers got strengthened in its relations with the Sejm. The Sejm could grant the Council of Ministers the vote of no confidence in two procedures. It could grant a constructive vote of no confidence (by way of voting, the deputies decided on calling off the Council of Ministers and a simultaneous election of a new Prime Minister) or a simple vote of no confidence resulting in the government's dismissal. The consequence was the President's involvement in the argument between the Sejm and the Council of Ministers. The President was then competent to accept the government's dismissal or dissolve the Sejm and the Senate. It was how in May 1993 the government headed by H. Suchocka fell (as a result of a motion of no confidence filed by one of the fractions of the government coalition) and how the elections to the Sejm and the Senate were announced.

Individual accountability of the Council of Ministers members before the Sejm was also provided for besides the joint parliamentary accountability of the Council of Ministers.

The so-called Small Constitution of 1992 kept the two chambers of the Parliament, with the Sejm dominating over the Senate, thus maintaining the Parliament which lacked balance in competences. The Sejm gave direction to the state's policy, it had exclusive control over the government and determined its fate. It was superior to the Senate in executive proceedings. The second amendment to the bill suggested by the second chamber could be rejected by the Sejm with an absolute majority of votes, while before it was the majority of at least 2/3 in the presence of at least half of the statutory number of deputies. On the other hand, if the Senate did not pass the bill within 30 days after the bill was presented to it, then the bill was considered accepted. Like before, the President participated in the final stages of the executive proceedings. Within 30 days he signed each bill and administered its announcement in the Journal of Laws. In that period he could refuse to sign the bill and pass it to the Sejm with a substantiated motion to be examined again. After the bill was passed by the Sejm again with a majority of at least 2/3 of votes in the presence of at least a half of the statutory number of deputies, the President signed the bill within 7 days and administered its announcement in the Journal of Laws unless he appealed to the Constitutional Tribunal with a motion to check its compatibility with the constitution. The President could also lodge such a motion to the Tribunal directly after getting the bill to be signed,

without passing it to the Sejm to be examined again. The President could not refuse to sign the bill which the Tribunal recognized as consistent with the Constitution.

In the context of the legislative function of the Sejm, the non-final character of the decisions of the Constitutional Tribunal in relation to the laws inconsistent with the Constitution was important. That remained after the principle of the Sejm's superiority in the political system of the state. When the Tribunal declared that a law was inconsistent with the Constitution, then the final decision in this matter was taken by the Sejm. It could state that the decision of the Tribunal was groundless and as such was not binding.

By way of a law the Sejm could authorize (in a substantially limited range) the Council of Ministers to issue statutory instruments. The law on authorizing the Council of Ministers to issue legislative acts was to determine the subject of regulation and the term of the authorization. When the authorization act was in force, the legislative initiative in matters concerning the authorization belonged exclusively to the Council of Ministers. The government's legislative acts did not require a consecutive confirmation by the parliament. In practice, the Sejm never authorized the government to issue regulations having the force of statute.

## **Towards the new constitution**

A phenomenon typical of the political transformation in Poland concerned the perturbations connected with preparing and passing a new constitution. Initially, the optimistic estimates assumed that it would be passed even as early as 3 May 1991, i.e. on the 200<sup>th</sup> anniversary (3 May 1791) of passing the first constitution both in the Republic of Poland and in Europe. Thus, it would be symbolically stressed that the new authorities referred to the best traditions of the Republic of Poland, traditions that on the European scale changed the way of thinking about the nature of the state's political system. In the beginning, problems of legitimization were first of all considered: whether the Sejm elected in 1989 in contract elections, with a socially discredited majority of the communist formation, possessed political legitimization to establish a new political structure. Members of the communist party and the satellite parties themselves saw the political complexity of the situation and they did not apply any pressure on the Sejm dominated by them to

pass the new constitution. On the other hand, the Sejm of the 1<sup>st</sup> term of office (1991–1993), as appointed in free elections, had full political legitimization to pass the new constitution but it did not possess one important feature in this respect, namely the majority necessary to pass the constitution. It was politically too fragmented and too much in conflict to think about a total constitutional consensus. Therefore, on 17 October 1992, the so-called Small Constitution was passed, which was a partial constitutional act, regulating only a fragment of constitutional issues and which was necessary for the current activity and referred to the governing mechanisms. Political instability and fragmentation of the Sejm of the 1<sup>st</sup> term of office were so much developed that – because of problems with appointing a majority government – in 1993 the Sejm was dissolved.

The Sejm of the 2<sup>nd</sup> term of office (1993–1997), elected in 1993, was politically stable but a problem of its political representativeness emerged. The point was that as a result of using an election threshold (together with D'Hondt method) in the Sejm elections for the first time in Poland, 34.4% of the voters voted for the candidates of election committees that did not cross the election threshold and as such could not participate in the division of seats in the Parliament. Following the motif of incomplete representativeness of the Parliament, in April 1994 the procedure of preparing and passing the constitution was changed, as a result of which, for example, the circle of entities competent to submit a draft constitution was supplemented with a citizens' initiative. At least 500,000 voters could submit a draft constitution to the Constitutional Committee of the National Assembly, which did take place in the form of one such project (supported by the "Solidarity" trade union). It was only solving the issues of legitimization that enabled concentration of work on a constitutional compromise and led to passing a new constitution on 2 April 1997. In a constitutional referendum on 25 May 1997, the constitution was supported with a small majority of votes. 42.86% of those entitled to vote took part in the referendum, out of whom 52.71% spoke for the constitution<sup>20</sup>.

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<sup>20</sup> More on the course of constitutional work, cf. R. Chruściak, *Przygotowanie Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. – przebieg prac parlamentarnych*, Warszawa 1997.

## The mechanism of government in the Constitution from 1997

The Constitution of 2 April 1997<sup>21</sup> is an outcome of political transformations. It sums up the changes that were effected in a fragmentary, successive and gradual manner since 1989 and that were actually preparing the total constitutional regulation from 1997<sup>22</sup>.

The political system of bodies of the state power was based on the principle of division and balance of the legislative, executive and judicial powers and on cooperation of the powers<sup>23</sup>. The legislative is executed by the Sejm and the Senate, the executive – by the President of the Republic of Poland and the Council of Ministers, and the judiciary – by courts and tribunals. The governing system is based on the solutions typical of the parliamentary-cabinet system supplemented with the mechanisms of rationalization, first of all with a constructive vote of no confidence and a (facultative) possibility of shortening the term of the Parliament unable to pass the budget act. It contains the mechanisms preventing concentration of the state power. It is expected to guarantee governing according to the will of the nation and with respect for freedom and individual rights.

The constitution enacted the procedure of electing the President. Like before, they are elected in general elections, for a 5-years' term of office with the right of one re-election. Democratic legitimization granted to the President in general elections corresponds to their developed tasks, which are not typical of the parliamentary-cabinet systems but at the same time excluding the possibility of directing the work of the government. The President is the highest representative of the Republic of Poland and a guarantor of the continuity of the state power. They watch over the observance of the Constitution, safeguard the state's sovereignty and security as well as the inviolability and indivisibility of its territory. In connection with the political tensions that occurred within the application of the so-called Small Constitution of 17 October 1992, the President participates in the execution of the executive in a limited degree. Although in principle, their official acts to be a valid require the Prime Minister's countersignature, at the same time the legislator

<sup>21</sup> Journal of Laws, No. 78, item 483 with amendments.

<sup>22</sup> W. Sokolewicz, *The Influence of External Factors on the Consolidation of Liberal Democracy in Poland. The Constitutional Dimension*, [in:] G. Mangott, H. Waldrauch, S. Day (eds.), *The International Dimension: Hungary, Poland, Spain*, Baden-Baden 2000, pp. 75 ff.

<sup>23</sup> More on this subject, cf. P. Sarnecki, A. Szmyt, Z. Witkowski (eds.), *The Principles of Basic Institutions of the System of Government in Poland*, Warsaw 1999.

provides for numerous exceptions from the principle of countersignature. The President bears only constitutional accountability for the official acts which are excluded from the countersignature<sup>24</sup>.

The President's destructive right to give opinion on candidates for the office of the Ministers of the Interior, Foreign Affairs and National Defense was abolished. The majority with which the Sejm could override the President's veto was lowered from 2/3 to 3/5. The President lost the right to refer in a preventive procedure (before signing the bills) to the Constitutional Tribunal, putting forward a motion to control the consistency of the bill with the Constitution about which he had taken the legislative veto. In other words, in a situation when the Sejm broke the legislative veto, the head of state has to sign the bill and it is only then the head of state can apply to the Constitutional Tribunal to examine its consistency with the constitution<sup>25</sup>.

The government is a collective body, separate in relation to the President<sup>26</sup>. Compared to the former situation, it grew in importance. It pursues both interior and foreign policy of the state. Its competences include matters of the state's policy that are not reserved for other bodies of the state and local governments. The Prime Minister is distinguished within the government. They are not the first among equals (*primus inter pares*), but they are the actual heads of the government. They direct the work of the Council of Ministers. They secure the policy of the Council of Ministers and determine the ways to exercise it. They coordinate and control the work of the Council of Ministers members. They act as the superior for all government administration workers. They control the work of local government. They have an exclusive right to provide countersignature to the President's acts.

In the process of appointing the Council of Ministers emphasis was laid on the formation of governments enjoying the support of the majority in the Sejm, the ones that would be stable and able to realize the assumed policies<sup>27</sup>. The President designates the Prime Minister, who

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<sup>24</sup> On constitutional accountability in contemporary Poland, cf. J. Zalesny, *Odpowiedzialność konstytucyjna w prawie polskim okresu transformacji ustrojowej*, Toruń 2004.

<sup>25</sup> On the institution of President in contemporary Poland, cf. T. Słomka, *Prezydent Rzeczypospolitej po 1989 roku. Ujęcie porównawcze*, Warszawa 2005.

<sup>26</sup> M. Kruk, *System rządów w Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 roku*, [in:] W. Skrzydło, R. Mojak (eds.), *Ustrój polityczny Rzeczypospolitej Polskiej w nowej konstytucji z 2 kwietnia 1997 roku*, Lublin 1998, p. 25.

<sup>27</sup> J. Jaskiernia, *Parlamentaryzm III RP: aksjologia konstytucyjna a dylematy polityki ustrojowej*, [in:] T. Mołdawa, J. Szymanek, M. Mistygacz (eds.), *Parlamentarny system rządów. Teoria*

proposes the composition of the Council of Ministers. The President appoints the Prime Minister together with the other members of the Council of Ministers within 14 days since the date of the first sitting of the Sejm or the resignation of the previous Council of Ministers. The Prime Minister appointed by the President must be granted the vote of confidence by the Sejm. It is expressed with an absolute majority of votes in the presence of at least half of the statutory number of deputies. In this way, the idea of parliamentary government is realized. In case of a lack of support from the Parliament, within 14 days the Sejm chooses the Prime Minister and the members of the Council of Ministers proposed by them with an absolute majority of votes in the presence of at least half of the statutory number of deputies. The President is obliged to appoint the government elected in this way because it has the acceptance of the parliamentary majority. In case the procedure of appointing the government on the initiative of parliamentary fractions fails, the initiative to form the government is taken by the President again. Within 14 days they appoint the Prime Ministers and – on the motion of the latter – the other members of the Council of Ministers. A simple majority of votes in the presence of at least half of the statutory number of deputies is sufficient for the government to be granted a vote of confidence by the Sejm. In case this attempt to form the cabinet fails, the President shortens the term of office of the Sejm and announces parliamentary elections. The impossibility of granting the government a vote confidence means that the Sejm is politically fragmented, unable to fulfill one of the key functions of the Parliament in the parliamentary-cabinet system, i.e. gives it the effective majority support, and as such it loses its *raison d'être*. On the other hand, the President's role in the process of the government formation is above all limited to organization<sup>28</sup>. As long as there is a stable governmental majority in the Sejm, it determines the choice of the Prime Minister. Only in a situation when the structure of parliamentary forces is not clear, the President can acquire greater political importance and become the actual creator of the cabinet.

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*i praktyka*, Warszawa 2012, p. 109; J. Szymanek, *Elementy racjonalizacji w konstrukcji parlamentarnego systemu rządów: analiza rozwiązań zawartych w Konstytucji RP*, [in:] T. Mołdawa, J. Szymanek, M. Mistygacz (eds.), *Parlamentarny system rządów. Teoria i praktyka*, Warszawa 2012, p. 150.

<sup>28</sup> M. Kruk, *System rządów w Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 roku*, [in:] W. Skrzydło, R. Mojak (eds.), *Ustrój polityczny Rzeczypospolitej Polskiej w nowej konstytucji z 2 kwietnia 1997 roku*, Lublin 1998, p. 35.

Searching for the mechanisms stabilizing the government's activity is also applicable to the procedure of a no confidence vote. The Sejm can grant the Council of Ministers a vote of no confidence only with a majority of the statutory number of deputies on the motion put by at least 46 deputies. In the motion, the deputies give the name of their candidate for the Prime Minister (a constructive vote of no confidence). If the resolution is accepted by the Sejm, the President accepts the resignation of the Council of Ministers and appoints the new Prime Minister chosen by the Sejm and – on the motion of the latter – the other members of the Council of Ministers. The motion on a constructive vote of no confidence cannot be submitted to vote earlier than 7 days after its submission. Another motion can be submitted only after 3 months since the former one was filed. It can be filed before this period elapses if at least 115 deputies lodge this motion.

Practice showed that the mechanisms of a constructive vote of no confidence stabilize the work of the government. Instability of the previous governments was significantly limited. The Council of Ministers does not have to fear that an accidental agreement (disagreement) of parliamentary fractions will lead to a governmental crisis and problems with forming a majority cabinet. Nevertheless, one can see certain phenomena which are politically undesirable, i.e. an ineffective minority government losing the voting in the Sejm but existing because the opposing fractions are incapable of choosing a common candidate for the Prime Minister. That was the status of Jerzy Buzek's government after the collapse of a coalition AWS<sup>29</sup>-UW<sup>30</sup> and decomposition of AWS. Likewise, the cabinet of Marek Belka, which was created after the collapse of a coalition SLD<sup>31</sup>-UP<sup>32</sup>-PSL<sup>33</sup>, was also a minority government, which was politically drifting and had no actual ability to perform the function of governing.

Besides a constructive vote of no confidence granted to the whole Council of Ministers, a vote of no confidence granted by the Sejm to particular ministers was left. A motion for a vote of no confidence can be filed by at least 60 deputies. Like a motion for a vote of no confidence for the Council of Ministers, a motion for an individual vote of no confidence cannot be submitted to voting earlier than 7 days after it was submitted.

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<sup>29</sup> AWS – Akcja Wyborcza Solidarność.

<sup>30</sup> UW – Unia Wolności.

<sup>31</sup> SLD – Sojusz Lewicy Demokratycznej.

<sup>32</sup> UP – Unia Pracy.

<sup>33</sup> PSL – Polskie Stronnictwo Ludowe.

Another motion can be submitted before the elapse of 3 months if at least 115 deputies file it. In practice, no minister was recalled according to that procedure despite the motions submitted.

The Prime Minister can refer to the Sejm for a vote of confidence for the Council of Ministers. It is granted with a majority of votes in the presence of at least a half of the statutory number of deputies. If the vote of confidence is not granted to the Council of Ministers, it results in the resignation of the Cabinet.

The government and particular ministers must enjoy the trust of the Sejm. Contrary to that, the President's attitude to them is of no importance, which means that they bear no political responsibility to him.

The function of the Parliament within the framework of the divided and balanced power is to pass bills as the basic source of law in the country, which affects the manner of creating all other sources of the state's law (except parliamentary regulations). With an exception of martial law, when the Sejm is not able to assemble for a sitting, the Parliament has a monopoly to pass legislative bills. Within the frameworks of the Parliament's autonomy, the bodies outside it are not competent to enforce the proceedings referring to a draft of a bill on the Parliament's Chambers. The exception concerns the budgetary proceedings and emergency proceedings. In a substantially limited scope, the Council of Ministers can recognize a draft of a bill passed by itself as urgent. The period to examine a draft of a bill which was considered as urgent is shortened to 14 days, and the period within which the President is obliged to sign the bill is shortened to 7 days. Differences in legislative proceedings concerning an urgent project are settled by the Parliament's Chambers themselves, which means for example that the government is not competent to enforce on them any definite manner of proceedings or any definite content of the bill enacted according to this procedure.

In the light of the binding legal regulations, the government does not dominate in the legislative proceedings. If the practice of recent years shows that it has acquired a special position, this is because of the political mechanisms – the strong party leadership of the Prime Minister, who fully subordinated to himself his own parliamentary club and is able to force his deputies to behave in the way he expects them to.

In relations with the government, only the Sejm has control over it<sup>34</sup>. The Senate does not have any controlling measures at its disposal, which

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<sup>34</sup> On the controlling function of the Sejm, cf. M. Kruk, *Funkcja kontrolna Sejmu RP*, Warszawa 2008; J. Zaleśny, *Dynamika procedur interpelacyjnych. Doświadczenia okresu trans-*

is one of the more important circumstances which define the Polish two-chamber model as asymmetric bicameralism, with the dominating role of the Sejm as the superior Chamber of the Parliament<sup>35</sup>.

The system of government adopted in the Constitution of 1997 generally proved correct in the process of its application<sup>36</sup>. Only in the period 2007–2010 (cohabitation of President Lech Kaczyński from Law and Justice, and Prime Minister Donald Tusk – chairman of the Civic Platform) strong political tensions took place but they were not caused so much by the ambiguity of constitutional regulations as behavioral factors and polarization techniques of the party competition.

#### ABSTRACT

In Poland, the process of departing from concentrated state power typical of the communist countries began in 1989. It was triggered by the Round Table agreement. Unexpectedly, the collapse of the communist authorities was hastened by the results of June elections to the Sejm and the Senate. They pointed out the scale of the nation's disappointment in the communist rule, the effect of which was that in autumn of 1989 the government that was formed, for the first time in a few decades of years was dominated by the political opposition. The process of political, economic and social changes got deeper, including the change of the political axiology of a communist state in December 1989 into the one adequate for a democratic state of law.

Transformations in the political structures of citizens overlapped the transformations in the system of the state power. The opposition, originally united around the "Solidarity" trade union, split right after the breakthrough of 1989 into political parties typical of contemporary states, with the characteristic multitude of opposing views and ambitions, which blocked the possibility of working out a constitutional compromise by the main participants in political relations, with simultaneous existence of legal solutions that did not adjust the political reality. As a result of seeking a temporary *modus vivendi*, in 1992 the so-called Small

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*formacji w wymiarze wertykalnym*, [in:] M. Kruk, J. Wawrzyniak (eds.), *Transformacja ustrojowa w Polsce 1989–2009*, Warszawa 2011.

<sup>35</sup> J. Szymanek, *Parliament (the Sejm and the Senate): status, structure and organization, procedures, functions and powers*, [in:] S. Sulowski (eds.), *The Political System of Poland*, Warsaw 2007, p. 67.

<sup>36</sup> J. Jaskiernia, *Parlamentaryzm III RP: aksjologia konstytucyjna a dylematy polityki ustrojowej*, [in:] T. Mołdawa, J. Szymanek, M. Mistygacz (eds.), *Parlamentarny system rządów. Teoria i praktyka*, Warszawa 2012, p. 110.

Constitution was accepted. It was not until 1997 that a constitutional agreement was concluded in the Parliament, the effect of which was the passage of a new, now binding Constitution. The Constitution of 2 April 1997 provides for the mechanisms of government proper for a rationalized system of parliamentary-cabinet system, with a simultaneous emphasis on the special role of Prime Minister as the actual head of the government. As such, it works in the process of its application.

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