

The Head of State in Poland From the Perspective of Legal History

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ABSTRACT

The theoretical analysis of the concept of the head of state cannot be detached from its historical, legal, international, and functional aspects. In this article, the analysis of the head of state is carried out primarily in the context of competences and performed functions.¹ The Republic of Poland, with its system based on the 1997 Constitution, is a representative democracy in which executive power is exercised by the government, subject to parliamentary control; legislative power belongs to the bicameral Parliament. The President is the head of state who, according to the Constitution, *is the highest representative of the Republic of Poland and the guarantor of the continuity of state power.*²

The role of head of state has changed its form and meaning over the centuries. The aim of this article is to present the process whereby the competences of the head of state were shaped. Analysis of the period from the adoption of the first constitution in 1791, the Constitution of May 3, deserves special attention in the context of the changes that have taken place in the institution of the head of state. On the basis of the historical background as well as the various constitutions, this article presents the concept of the head of state in the aspect of state sovereignty and its attributes as well as the legitimacy of public authority, and analyzes both the legal and factual status of this body.

KEYWORDS

head of state, meaning of the head of state throughout the history, functions of the head of state, competences of the head of state, state sovereignty, Poland

Şeful statului în Polonia din perspectiva istoriei dreptului

REZUMAT

Analiza teoretică a conceptului de şef de stat nu poate fi desprinsă de aspectele sale istorice, juridice, internaţionale şi funcţionale. În acest articol, analiza şefului de stat este realizată în primul rând în contextul competenţelor şi al funcţiilor îndeplinite. Republica Polonă, cu sistemul său bazat pe Constituţia din 1997, este o democraţie reprezentativă în care puterea executivă este exercitată de guvern, sub rezerva controlului parlamentar; puterea legislativă aparţine Parlamentului bicameral. Preşedintele este şeful statului >>

1 J. Ciapała: Status ustrojowy prezydenta jako głowy państwa (The political status of the president as head of state), *Ruch Prawniczy. Ekonomiczny i socjologiczny* rok 1996/58, (pp. 13–28), p. 14.

2 Dz.U.1997.78.483, *Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997*. (Constitution of the Republic of Poland of April 2, 1997) Art. 126

>> care, în conformitate cu Constituția, este cel mai înalt reprezentant al Republicii Polone și garantul continuității puterii de stat.

Rolul de șef de stat și-a schimbat forma și semnificația de-a lungul secolelor. Scopul acestui articol este de a prezenta procesul prin care s-au conturat competențele șefului statului. Analiza perioadei de la adoptarea primei constituții în 1791, Constituția din 3 mai, merită o atenție deosebită în contextul schimbărilor care au avut loc în instituția șefului statului. Pe baza contextului istoric, precum și a diferitelor constituții, acest articol prezintă conceptul de șef al statului sub aspectul suveranității statului și al atribuțiilor sale, precum și al legitimității autorității publice, și analizează atât statutul juridic, cât și cel faptic al acestui organ.

CUVINTE CHEIE

șef de stat, semnificația șefului de stat de-a lungul istoriei, funcțiile șefului de stat, competențele șefului de stat, suveranitatea statului, Polonia

I. SYSTEMIC RULES IN THE POLISH LANDS UNDER THE PARTITIONS

The period during which Poland was in political captivity covered 123 years. In 1795, the Polish lands were finally partitioned between the Kingdom of Prussia, Austria, and Russia, the culmination of a series of partitions initiated by the signing of the treaties concerning the First Partition of Poland in St. Petersburg on August 5, 1772.

The misfortune of the Polish state was that the partitions coincided with the great changes symbolized by the Constitution of May 3, 1791. The constitution was a compromise between the nobility and the king that established the principle of a monarchical form of government and the heredity of the throne and introduced the tri-partition of power. The constitution abolished the liberum veto and confederation. It also retained the systemic shape of the parliamentary monarchy, which had existed in Poland practically since the late Middle Ages.³ The King of Poland, according to Article VII of the Constitution, actually possessed executive power. In the exercise of power he was accompanied by the so-called Guard of Rights and government commissions. Standing at the Head of the State, he bore neither constitutional nor political responsibility. The article of the constitution devoted to the king and executive also referred to the right of clemency as an element of justice.⁴ However, the head of state had his share of authority in the legislature; among other powers, he presided over the Senate Chamber.⁵

In practice, the constitution ceased to be in force in 1792. As a result of the three successive partitions, the Polish lands were subjected to the sovereign power of the partitioning states. From a systemic point of view, these were absolute monarchies

3 W. Uruszczak: *Zasady ustrojowe w konstytucji 3 maja 1791r.* (political principles in the constitution of May 3, 1791.) https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/5419/uruszczak_zasady_ustrojowe_w_konstytucji_3_maja_1791_r_2014.pdf?sequence=1&isAllowed=y page 26 (accessed: 03.02.2022)

4 Ustawa Rządowa z dnia 3-go maja 1791 roku (Government Act of May 3, 1791) art. VII

5 Ustawa Rządowa z dnia 3-go maja 1791 roku (Government Act of May 3, 1791) art. VI

in which the rulers exercised full and unlimited power, that is, absolute power in the substantive scopes of judicial, executive, and administrative authority.⁶ In these lands, short-lived Polish states were established at various times, deprived of sovereignty.

1. The Duchy of Warsaw

In 1807, with the Peace of Tilsit (Tylża), Napoleon Bonaparte's war against Prussia ended in victory. The most important political decision as a result was the creation of the Duchy of Warsaw from a part of the Prussian partition. In 1809, as a result of the war with Austria, the Duchy was enlarged by lands that had been annexed by Austria. In this way, the Polish state was rebuilt to a limited extent in the form of the Duchy of Warsaw. On July 22, 1807, in Dresden Napoleon granted the Duchy a constitution.⁷

The king was given the quite broad competences of full executive power and legislative initiative. He approved the laws of the Sejm and government acts. He also filled state positions, and the ministers and senior officials were responsible to him.⁸

The Constitution granted a number of powers to the head of state in the person of the monarch. These rights were extensive in matters of state; however, exceptions were made for those reserved for the judiciary and parliamentary legislation. The king could participate in creating the law, in addition to all executive and governmental powers. With regard to matters referred to parliamentary legislation, he was entitled to exclusive legislative initiative. The appointments of judges, ministers, and senators came from the King, and lower officials were appointed by the royal delegation.⁹ The Sejm remained bicameral, with a division into a Chamber of Deputies and a Senate. Following the example of the pre-partition Polish-Lithuanian Commonwealth, governors, bishops, and castellans were ex officio introduced into the Senate. A Council of State was also set up, following the French model, under the chairmanship of the king, with a secretary, ministers, and four registrars. The Council was entrusted with settling disputes over competence between courts, drafting laws, bringing ministers to court, and ruling in cassation.¹⁰

6 Wacław Uruszczak (2020): *Zasady ustrojowe na ziemiach polskich w okresie zaborów. Od suwerenności monarchy do suwerenności narodu. Przyczynek do historii administracji w XIX w.*, (Constitutional principles of the Polish territories in the period of the partitions: From the sovereignty of the monarch to the sovereignty of the nation.: Contribution to the history of administration in the 19th century), *Academica*, (pp. 22–40), pp. 24–25.

7 *Konstytucja Księstwa Warszawskiego* (Constitution of the Duchy of Warsaw) <https://polishfreedom.pl/dokument/konstytucja-ksiestwa-warszawskiego> (accessed: 06.10.2021)

8 Zdrada (2005): p. 58.

9 A. Dziadzio: *Konstytucja księstwa warszawskiego 1807. Polska odmiana bonapartyzmu* (The Constitution of the Duchy of Warsaw 1807. The Polish variety of Bonapartism) *Państwo i Społeczeństwo* 2007/7/1, p. 119.

10 *Konstytucja Księstwa Warszawskiego* (Constitution of the Duchy of Warsaw) <https://polishfreedom.pl/dokument/konstytucja-ksiestwa-warszawskiego> (accessed: 06.10.2021).

In 1815, the Duchy of Warsaw ceased to exist when the Congress of Vienna partitioned it and incorporated the autonomous political organisms created at the time into the Kingdom of Prussia and the Russian Empire: the Grand Duchy of Posen and the Kingdom of Poland.¹¹

2. The Kingdom of Poland

The Kingdom of Poland, also called the Congress Kingdom, was a state created by the decision of the Congress of Vienna. On the basis of the Constitution of the Kingdom of Poland, it was united with the Russian Empire in a personal union in the years 1815–1832.

Tsar Alexander I set the solemn proclamation of the Kingdom of Poland for June 20, 1815. Each time the Emperor of Russia became King of Poland, the national army, state apparatus, parliament, law, and judiciary were created separately.¹²

According to Article 35 of the Constitution of the Kingdom of Poland, or more precisely the Constitutional Act of the Kingdom of Poland, the Government was in the person of the king. The king exercised executive power in its entirety. All executive or administrative power derived exclusively from him. The royal person was sacred and untouchable. The king's powers included the following: the convening, adjournment, and cancellation of ordinary and extraordinary Sejm sessions; appointment of senators, ministers, and senior officials; appointment and dismissal of the governor; right to suspend Sejm laws; and right to sanction both resolutions and laws of the Sejm. The constitution given to the Kingdom of Poland also regulated issues concerning the governor, who chaired the Council of State and presented the king with candidates for senators, ministers, and senior officials. Article 63 of the Constitution regulated a council of state under the presidency of the king or his governor consisting of ministers, councilors of state, registrars, and any persons whom the king wished to specifically summon to it. The Constitutional Act of the Kingdom of Poland established national representation in a parliament consisting of the king and two chambers, the first consisting of the Senate, the second of deputies and deputies from the municipalities. According to the Constitution, all public administrative, judicial, and military activities, without exception, were conducted in Polish.¹³

3. The Republic of Cracow

Disputes arose over the political affiliation of Krakow at the Congress of Vienna. Alexander I intended to keep the city for himself, Prussia was also interested in the area, and Austria wanted to restore the state to the conditions holding before 1809.

¹¹ Uruszczak (2020): p. 32.

¹² *Ustawa Konstytucyjna Królestwa Polskiego z dnia 27 listopada 1815* (Constitutional Act Of The Kingdom Of Poland of November 27, 1815), *Konstytucje w Polsce: 1791–1990 / wybór i oprac.* Tadeusz Kołodziejczyk i Małgorzata Pomianowska. Warszawa: Przemiany, 1990.–S. 48–56, Arts. 35–46.

¹³ Ibid.

A compromise between the aspirations of the partitioning powers of Austria, Russia, and Prussia was the creation of a separate state formation for Krakow with the status of a free city. The Free City of Krakow was granted a liberal constitution on September 11, 1818. This constitution guaranteed the equality of all before the law, established the Polish language as the official language, and defined Catholicism as the national religion, while providing for tolerated challenges and ensuring the equality of Christian denominations. The Constitution confirmed the inviolability of property, personal freedom of peasants, and freedom of printing. It also introduced the independence of the judiciary and openness of procedures. The right to vote and stand for election was granted to citizens who fulfilled the requirements of a high property and education index. The Napoleonic Code and the French Commercial Code were retained, and the right to elect representatives belonged to the Chapter, University, and municipal assemblies.¹⁴ The Constitution established the dominance of the Ruling Senate, which formally constituted the executive branch.¹⁵ Power rested in the hands of 12 people headed by a president appointed separately by the Assembly of Representatives every three years. The Senate worked through departments, namely the Police Department, the Interior Department, and the Public Revenue Department, and it exercised legislative initiative as well as administrative authority.¹⁶ Gradual restrictions on the independence of the Free City of Krakow by the neighboring powers followed from the end of the 1820s. The fate of the Republic of Cracow was determined by the support given to the November Uprising, and then by the failure of the Cracow Uprising—in November 1846 the Republic of Cracow was incorporated into the Austrian Empire.¹⁷

It should be noted that the Constitution of the Free City of Krakow was not an act issued by the authorities of a sovereign state. The Constitutions were issued by sovereign monarchs of the governing states, so the sovereigns exercised their protection only on the basis of articles.¹⁸

II. BEGINNINGS OF PARLIAMENTARY DEMOCRACY IN POLAND

The First World War, which lasted from 1914 to 1918, led to the collapse of three great European dynasties and monarchies: the Russian Romanovs, the Austro-Hungarian Habsburgs, and the German Hohenzollerns. Owing to internal and territorial

14 Zdrada (2005): p. 237.

15 *Ustawa Konstytucyjna Królestwa Polskiego z dnia 27 listopada 1815 r* (Constitutional Act Of The Kingdom Of Poland of November 27, 1815) *Konstytucje w Polsce: 1791–1990 / wybór i oprac.* Tadeusz Kołodziejczyk i Małgorzata Pomianowska.–Warszawa: Przemiany, 1990.–S. 48–56, Arts. 35–46.

16 Zdrada (2005): p. 238.

17 Ibid.

18 P. Cichoń (2012): *O rządach prawa w Wolnym Mieście Krakowie uwag kilka* (On the rule of law in the Free City of Krakow: A few remarks) *Krakowskie Studia z Historii Państwa i Prawa*, (pp. 241–254) p. 243.

disintegration, these states became republics following the overthrow of the monarchical system of government. The collapse of the monarchical model of government also meant the introduction in most European states (except the Bolshevik regime in Russia) of a new system of government based on democratic principles. In the countries that emerged as a consequence of the collapse of the monarchy, a parliamentary-cabinet system of government was introduced, which was characterized by the political control of parliament over the executive. Monarchical autocracy was considered a serious threat to the political system that had to be protected against. The solution was encapsulated in the slogan “democracy for all.”¹⁹

1. The rebirth of the Polish State

The specific situation of the Polish lands in 1918–1919 necessitated the introduction of special solutions. In the absence of other institutions characteristic of a state governed in a republican way, all power was concentrated in the hands of the Provisional Chief of State.²⁰

On November 11, 1918, after returning to Warsaw from captivity, in a special Address to the Nation, the Regency Council transferred “military authority” to Józef Piłsudski. It also declared that it would place power in the hands of the National Government, calling on all political centers in Poland to form one state. In agreeing to this, the general saw the need to ensure continuity of power in government as well as law against the backdrop of turbulent and revolutionary times.²¹ On November 22, 1918, Piłsudski was awarded the title of the Provisional Chief of State, which officially confirmed his influence in the country. He established the Second Polish Republic as a democratic republic, ceding the rest to the Sejm, which was to be elected on January 26, 1919. He became the main decision-maker in the matter of Polish politics.²²

2. The Small Constitution of 1919

After the elections, the Legislative Sejm passed the so-called Small Constitution on February 20, 1919. It was intended to define the political system of Poland until the entry into force of the relevant Constitution. This act introduced the supreme position of the Sejm, thus rejecting the principle of the tripartite division of power. The

19 Andrzej Dziadzio (2012): *Powszechna Historia Prawa* (General Legal History), Wydawnictwo naukowe PWN, Warszawa, (pp. 237–279), pp. 239–242.

20 Waldemar Chorańczewski, Robert Degen (2007): *Kancelarie “władców” polskich XIX i XX wieku Rekonesans Badawczy* (Chancelleries of the Polish “rulers” of the 19th and 20th centuries) Uniwersytet Mikołaja Kopernika w Toruniu, Toruń, (pp. 131–151), p. 12.

21 Grzegorz Górski (2018): *Polonia Restituta Ustrój Państwa Polskiego w XX wieku* (Polonia Restituta: Establishment of the Polish state in the 20th century), Jagiellońskie Wydawnictwo Naukowe (pp. 43–49), p. 43.

22 A. Lipka: (accessed:10.11.2021)

result of the influence of French constitutionalism was the view that sovereign power would be exercised by a representative body, representing the will of the Nation.²³

The position of head of state and cabinet was subordinated to the representative body in line with the principle of parliamentary sovereignty. An expression of this subordination was the recognition of the head of state as the “supreme executor” of the Sejm’s resolutions on military and civil matters. However, in practice, the lack of a normative definition of the competences of the head of state stood in the way of Józef Piłsudski’s freedom to exercise state authority.²⁴

According to the Small Constitution, the head of state appointed the full Government on the basis of an agreement with the Sejm. The head of state, together with the Government, was also responsible to the Sejm for the performance of his office, and every act of state of the head of state required the signature of the relevant Minister.²⁵ The actual political role of the Chief of State in the person of Józef Piłsudski was much stronger than it might seem on the basis of the provisions of the Small Constitution. It should be noted that Józef Piłsudski was also acting as Commander-in-Chief.²⁶ The Small Constitution remained in effect until the final constitution was adopted on March 17, 1921.

3. The March Constitution of 1921

On March 17, 1921, the Sejm adopted the Constitution of the Republic of Poland by a large majority. The fundamental principles on which the March Constitution was based were the principle of the supremacy of the nation, the principle of the republican form of government, the principle of state unity, and the principle of the tripartition of power. The Constitution also contained a very broad catalogue of civic rights and duties. They were to guarantee all citizens of the Republic the most far-reaching freedoms.²⁷

In the March Constitution, the head of state was the nation’s organ of executive power. The parliamentary-cabinet system introduced by the March Constitution assumed total supremacy of the legislature over the executive. All official acts of the President required the countersignature of the relevant minister. The President had the powers typical of a head of state in a parliamentary system with regard to foreign policy. He could not exercise supreme command in wartime although he was the supreme head of the armed forces. He appointed the commander-in-chief for the duration of the war upon the proposal of the Council of Ministers. The weak position of the President was also due to the fact that he could not dissolve the Sejm on his own and

23 Krzysztof Prokop: W poszukiwaniu systemu rządów u progu niepodległości (1918–1921) (In search of a system of government on the threshold of independence (1918–1921)), *Miscellanea Historico-Iuridica*, Tom XVII, z. I 2018 (pp. 25–42), p. 7.

24 Ibid.

25 Dz.Pr.P.P. 1919 nr 19 poz. 226 *Uchwała Sejmu z dnia 20 lutego 1919 r. o powierzeniu Józefowi Piłsudskiemu dalszego sprawowania urzędu Naczelnika Państwa* (Resolution of the Sejm of February 20, 1919, on appointing Józef Piłsudski to hold the office of head of state).

26 Prokop (2018): p. 10.

27 Górski (2018): p. 66.

had no veto over parliamentary acts. By passing a simple vote of no confidence, the Sejm could remove the government in a politically responsible manner.

This led to state instability and frequent changes of government. It was not until the August Constitutional Amendment of 1926 that the powers of the President were increased. This change, which among other things introduced the right to issue decrees with the force of a statute, had the positive effect of codifying (unifying) the basic branches of judicial law in the 1930s.²⁸ The position of President of the Republic changed after the May Coup. The amendment of the Constitution of August 2, 1926, introduced the power to dissolve the Sejm and Senate (admittedly at the request of the Council of Ministers) and the right to issue regulations with the force of law (these lost their force if rejected by the Sejm or if they were not submitted to it within 14 days at the nearest session).²⁹

After the May Coup, Józef Piłsudski did not dissolve Parliament, and did not accept the election of the president by the National Assembly. He had his trusted colleague Ignacy Mościcki, a chemistry professor, elected to the office. A new government was also formed, headed by mathematics professor Kazmierz Bartel. Realizing that Piłsudski provided strong support to Bartel, and despite the lack of a parliamentary majority, the parties in the Sejm decided not to dismiss him. This gave rise to the so-called “extra-parliamentary governments,” in which the Sejm in fact renounced its constitutional right to create the composition of the Cabinet, although it still held this right formally under the Constitution.³⁰ In this form the constitution functioned until April 1935, when it was replaced by a new constitution. In 1944, the April Constitution was rejected by the Communist government imposed by Joseph Stalin, and nominally the March Constitution was deemed binding, although in fact its democratic principles were not respected. This state of affairs was maintained until 1947.³¹

Modeled on the French Constitution of the Third Republic, the March Constitution granted very limited powers to the President, making his actions dependent on the will of the Sejm. It is important to note here the discrepancy between theory and practice. For example, while from a formal point of view the President had complete freedom to choose a candidate for prime minister, he had to take into account the balance of power in Parliament (which could bring down the government by a simple majority). Also, in accordance with Article 50, the conclusion of peace and declaration of war by the President made the constitution dependent on the consent of the Sejm.³² Therefore, as a consequence of the May Coup, the first changes in the subse-

28 Ibid.

29 Chorążyczewski, Degen (2007): p. 14.

30 Stanisław Zakroczymski (2020): *Jaka konstytucja dla Niepodległej?* (What constitution for the independent?), Zeszyty do debat historycznych, Muzeum Józefa Piłsudskiego w Sulejówku, Sulejówek (pp. 2–43) p. 15.

31 *Konstytucja marcowa* (What constitution for the independent?) (<https://polishfreedom.pl/dokument/konstytucja-marcowa>) (accessed: 12.12.2021)

32 M. Jamróz: *Głowa państwa w Rzeczypospolitej Polskiej w latach 1922–1935* (Head of state in the republic of Poland from 1922 to 1935) <https://jpilsudski.org/artykuly-ii-rzeczpospolita-dwudziestolecie-miedzywojnie/prawo-i-administracja/item/1342-g%C5%82owa-pa%C5%84stwa-w-rzeczypospolitej-polskiej-w-latach-1922-1935> (accessed: 10.02.2022)

quent Constitution concerned the strengthening of the position of the President as head of state.

4. The April Constitution of 1935

The Constitution of 1935 introduced a presidential system to the Republic of Poland, transferring most of the state power to the President while significantly reducing the role of the Sejm.

In the light of the formal controversy surrounding the adoption of the Constitution by the Sejm on January 26, 1934, the ruling camp decided to seek compromises with some of the opposition, making use of the advantage it had gained. The Senate by the required 2/3 majority finally passed the amended version of the Constitution finally on January 16, 1935. This made it necessary for the Sejm to vote on the Constitution again. The vote took place during the sitting of 23rd and 24th March, 1935. In all, 260 deputies voted in favor of the Constitution as adopted by the Senate, 139 deputies against. On the April 23, 1935, the new Constitution was signed by President Ignacy Moscicki.³³

The April Constitution put the state on a pedestal, but it was treated as a structure guaranteeing individual rights and organizing social life. The citizen was guaranteed the possibility of developing personal values and the freedom of conscience, speech, and association, limited, however, by the common good, and was assured equality before the law.³⁴ The President had the task of harmonizing the actions of the supreme organs of state “as a superior factor.” The basis for strengthening his position was a wide range of personal powers, the exercise of which did not require the Prime Minister and ministers to countersign. These powers included, among others: dissolution of the Sejm and Senate before the end of the term; the right to appoint and dismiss the Prime Minister, first President of the Supreme Court, President of the Supreme Chamber of Control, Commander-in-Chief, and Inspector General of the Armed Forces; nominate a candidate for president; and order general elections.³⁵ The April Constitution was formulated on completely different ideological principles than its repealed predecessor. The April Constitution created an authoritarian system, which is admittedly an intermediate system between a democratic and totalitarian state. Nevertheless, contrary to the declaration contained in Article 4 of “free development of social life” and “ensuring the citizens the possibility of developing their personal values,” this development is reflected in the fact that the state was supposed to “give direction and regulate its conditions,” “uniting” the activities of all citizens (Article 9). Such a system was significantly deepened by the adoption of the principle of elitism in Article 7.³⁶

33 Górski (2018): p. 91.

34 Dz.U. 1935 nr 30 poz. 227 *Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r.* (Constitutional Act of April 23, 1935).

35 Górski (2018): p. 97.

36 Paweł Sarnecki: *Głowa państwa w obu polskich konstytucjach kwietniowych* (The head of state in both Polish April Constitutions), *Studia Iuridica Lublinensia*, 2014/22 (pp. 298–308) p. 3.

III. THE POLISH GOVERNMENT IN EXILE DURING WORLD WAR II

After losing the defensive war in 1939, Poland was occupied by the Soviet Union and Nazi Germany. The Second Republic retained state sovereignty and was represented in diplomatic relations by the government of the Republic of Poland in exile, which obtained refuge in Paris and Angers (on an extraterritorial basis until June 1940), and then in London, where the government moved its headquarters after the defeat and capitulation of France before the Third Reich. As the Polish state still had constitutional organs of state power (including secret civil administration and judiciary in the occupied country, the Polish Underground State) and armed forces, acting simultaneously in conspiracy (the Home Army) and in exile, *de jure* and *de facto* the Second Republic existed until July 5, 1945.

The Polish state did not fall in September 1939; its territory was temporarily occupied. No act of surrender took place and the Polish authorities managed to leave the territory occupied by the occupying forces. On the basis of constitutional regulations, new authorities in exile were established.

The Constitution of the Republic of Poland of 1935 contained clauses that made it possible for the highest authorities of the state to remain capable of acting in extraordinary situations. A fundamental regulation was the provision allowing the incumbent president to appoint his successor in a situation of emergency. The successor took office at the moment of the current president's resignation. Such an instrument made it possible to maintain the continuity of a key political institution in the system of state bodies established under the April Constitution. The president's personal powers included the creation of both military and civilian centers of governance for the country in times of both war and peace.³⁷ One of the most important political modifications was the creation of the National Council of the Republic of Poland. Under existing conditions, there was undoubtedly a need to create an institution that could replace the Sejm and Senate. The Council was to be a representation of political parties and circles established outside Poland.³⁸ The Council was established by decree of Polish President Władysław Raczkiewicz on December 9, 1939, in France, with Ignacy Jan Paderewski as its president.

The National Council was set up as an advisory body to the president and the Government, with its seat becoming the seat of the Government and consisting of at least 12 members appointed by the president on the proposal of the Chairman of the Council of Ministers.³⁹

From a formal point of view, the outbreak of the Second World War only changed the place of the Office of the President of the Republic of Poland to Paris, and later to London. The end of the war ushered in the formation of another centre which claimed the

37 Górski (2018): p. 115.

38 Górski (2018): p. 116

39 Dz.U. 1939 nr 104 poz. 1008 *Dekret Prezydenta Rzeczypospolitej z dnia 9 grudnia 1939 roku o powołaniu Rady Narodowej* (Decree of the President of the Republic of Poland of December 9, 1939, on the establishment of the National Council)

right to rule in Poland. The occupation of the office of president by the President of the National Council meant that in the first post-war years, until 1947, there was no separate office that dealt with the office service of the head of state. These tasks, as for the entire council, were performed by the Presidential Office of the National Council.⁴⁰

IV. THE PEOPLE'S REPUBLIC OF POLAND

In the constitutional systems of the Communist Bloc countries, a characteristic feature of the systemic model of the highest state authorities was the appointment of a second supreme body of state power besides parliament. However, this body was not selected through direct universal suffrage, and therefore it did not have the features of a representative institution. The composition of this body was chosen by parliament, and only from among the deputies sitting in it. Consequently, some parliamentarians were members of two supreme bodies at the same time, which resulted in the creation of the same branch of state bodies. It is worth stressing that these were not equivalent bodies, as the attribute of the highest organ of state power was vested exclusively in parliament (in accordance with the constitutional principle of the unity of power, which was then adopted in all the countries with real socialism).⁴¹

After World War II, the Communists in Poland and the other satellite states followed a fairly uniform scenario of the gradual liquidation of all institutions functioning in society independent of the authorities, in the area of social organisation as well as religion and customs, and thus political and spiritual freedom was cancelled.⁴²

1. The Small Constitution of 1947

By virtue of the Constitutional Act of February 19, 1947, on the system and scope of activity of the highest authorities of the Republic of Poland (the so-called Small Constitution), the institution of the Chief Presidium was retained in the political system of the People's Republic of Poland. It was also maintained in the period of the Legislative Sejm (1947–1952). That institution became the Council of State, modelled on Soviet legal and organizational regulations. The similarity to the Presidium of the National Council was evident; however, the Council of State should not be treated as a body performing an analogous function. In spite of taking over analogous competences of its predecessor (including, first and foremost, exercising supervision over the activities of the national councils), the difference lay in the position of the Council of State in the structure of the supreme organs of the Republic. It was also distinguished by its composition and the scope of competences granted by the

40 Chorażyczewski, Degen (2007): p. 145.

41 Stanisław Bożyk: Pozycja ustrojowa Rady Państwa w Konstytucji PRL z 22 lipca 1952 r. (The political position of the Council of State in the Constitution of the People's Republic of Poland of July 22, 1952) *Miscellanea Historico-Iuridica*, 2009/8, (pp. 161–174), p. 2.

42 Janusz Wrona: Ustanowienie systemu komunistycznego w Polsce (Establishment of the Communist system in Poland), *Polski wiek XX, t. 3, Bellona i Muzeum Historii Polski*, Warszawa, 2010, (pp. 35–80), p. 15.

Small Constitution. The President held his office according to the rules set out in the March Constitution (Articles 40–44, 45, and 46–54). He was elected for 7 years by an absolute majority of votes in the presence of at least 2/3 of the statutory number of deputies. The Small Constitution stipulated that the head of state would become the Chairman of the Council of State, as well as the Cabinet Council (i.e., the Council of Ministers convened by the Prime Minister).⁴³

2. The Constitution of the Polish People's Republic of 1952

The model that came from the so-called “real socialist” state was reflected in the 1952 Constitution. It relied on the superiority of representative bodies over state bodies and also on the unity of state power. In this case, the Council of State was the collective head of state. The Sejm controlled the activities of the Council, which was directly subordinate to it and whose positions and role were determined by its constitutional powers. One of these was the possibility of replacing Sejm activities by, for example, passing parliamentary decrees which had the force of acts of Parliament.⁴⁴

The Constitution of the People's Republic of Poland from 1952 formulated the systemic shape of the chief executive body, most similar to the model of the collegiate head of state adopted in the states of real socialism. From a formal point of view, the most important political institution of the People's Republic of Poland was the Sejm. Sessions were convened by the Council of State, which was formally the second most important political institution next to the Sejm. Although the Constitution stipulated in Article 30, Paragraph 2, that this institution was to be subordinate to the Sejm in all of its activities, in reality the Sejm did not have the possibility of such control.⁴⁵ The Council of State was established by virtue of the Constitution. It differed from both the National Council and the Council functioning in the period of the Constituent Assembly in terms of the competencies conferred upon it, its legal and organizational character, and its place in the system of supreme organs of the state. The Constitution of the People's Republic of Poland, in terms of both its internal systematics and the content of its legal regulations, was very clearly modelled on the principles of the “Stalinist” Constitution of the USSR of 1936. The shape of the Polish statute at that time was significantly influenced by the Soviet leadership, which served as the model for the constitutions that the countries called “people's democracies” adopted in the middle of the 20th century.⁴⁶

According to Article 25 of the Constitution of July 22, 1952, the Council of State ordered elections to the Sejm and also convened its sessions. It established the universally binding interpretation of laws and issued decrees with the force of law. Furthermore, it was responsible for appointing and dismissing plenipotentiary representatives of the People's Republic of Poland, ratifying and terminating

43 Dz.U. 1947 nr 18 poz. 71 *Ustawa Konstytucyjna z dnia 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej* (Constitutional Act of February 19, 1947, on the organisation and scope of action of the supreme organs of the Republic of Poland).

44 S. Bożyk: *Pozycja ustrojowa Rady Państwa w Konstytucji PRL z 22 lipca 1952 r.*, p. 161 *miscellanea historica* tom VIII ROK 2009

45 Górski (2018): p. 181.

46 Bożyk (2009): p. 5.

international agreements, and filling military and civil posts designated by law. In addition, it awarded decorations, orders, and honorary titles. It acted on the principle of collegiality and was subordinate in all its activities to the Sejm. From 1952 to 1989 the Council of State of the People's Republic of Poland performed the function of head of state collectively, being the equivalent of the president. It ensured the continuity of the highest state leadership in connection with the session-based work of the Sejm.⁴⁷

After coming into force in 1952, the Constitution was subject to many changes and amended several times, especially after the establishment of the so-called "Solidarity Movement." Despite the assumptions of the Constitution, in reality power was not in the hands of the people; political control was centralized. Above the rights of the individual were collective interests. A planned economy was introduced and the mechanisms for enforcing individual freedoms and rights were abolished.

3. The beginning of the crisis

At the beginning of the 1980s, the PRL economy was entering a state of acute crisis. In July and August 1980, a huge number of strikes broke out across the country, which led to the signing of social agreements in Szczecin, Gdańsk, and Jastrzębie. The PRL authorities agreed to the creation of independent trade unions. Workers were convinced that it was necessary to establish a common trade union representation against the regime. Consequently, at the beginning of September 1980, the nationwide Independent Self-Governing Trade Union (NSZZ) "Solidarity" came into being. The union dynamically gathered around 10 million members, thus becoming a national movement, spearheading the fight against the Communist regime.⁴⁸

When the decision was made to impose martial law in Poland in 1981, a legal vacuum was created, as no act of statutory rank was passed in the period when the 1952 Constitution was in force organizing the functioning of the administrative apparatus, state authorities, and the national economy, as well as by the failure to regulate the rights and obligations of citizens during the period of martial law. In December 1981 it was decided to issue the Decree on martial law on the basis of Article 33, Para. 2 of the Constitution, as well as the Decree on special proceedings in cases of crimes and offences during martial law and the Decree on transferring organizational units of the Public Prosecutor's Office of the People's Republic of Poland to the jurisdiction of military courts and military organizational units of the Public Prosecutor's Office of the People's Republic of Poland. Constitutional provisions were violated in the issuance of the above decrees. Martial law in Poland was suspended as of December 31, 1982, by a resolution of the State Council of December 19, 1982, and lifted completely on July 22, 1983, by a resolution of July 20, 1983.⁴⁹

47 Dz.U. 1947 nr 18 poz. 71 *Ustawa Konstytucyjna z dnia 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej* (Constitutional Act of February 19, 1947, on the organisation and scope of action of the supreme organs of the Republic of Poland).

48 Górski (2018): p. 191.

49 Magdalena Zabłocka: „Solidarność” – Stan wojenny w Polsce (Solidarity – martial law in Poland) <https://teatrnn.pl/leksykon/artykuly/solidarnosc-stan-wojenny-w-polsce/> (accessed: 04.12.2021).

On March 26, 1982, the Sejm amended the Constitution, introducing in Chapter IV two new institutions, the Constitutional Tribunal and (in further articles) the State Tribunal. Thus, in Chapter IV of the Constitution, regarding the Constitutional Tribunal, the State Tribunal, and the Supreme Chamber of Control, institutional constitutional guarantees were introduced, guarantees of the rule of law.⁵⁰ Through the creation of the State Tribunal, the constitutional responsibility of persons holding “managerial” state positions was restored. The introduction of the Constitutional Tribunal made it possible to rule on the unconstitutionality of laws and other legal acts. Both of these institutions were unknown to Soviet constitutionalism.⁵¹ The Act on Social Consultation and Referendum of May 6, 1987, adopted by the Sejm of the People’s Republic of Poland restored the institution of the referendum. The results of the Referendum of November 29, 1987, came as a shock to the regime, but no less so to the opposition leaders, who were unable to present a clear alternative to the actions of the authorities. The growing economic catastrophe, which was one of the internal factors alongside the decomposition of the system and the paralysis of the Soviet state driving events, aimed at reforming the system and economic model adopted by the ruling elite of the time. These were sham changes that did not work, due to the ever-growing resistance and social mood. The subsequent policy of further perfecting the socialist system was therefore put in doubt.⁵²

4. The beginning of systemic transformation in Poland

In mid-August 1988, the communist authorities began direct talks with the opposition, which were prompted by the numerous social protests that had been ongoing since April in various regions of Poland. The so-called “Magdalenka talks,” taking place from September 16, 1988, were concerned with the legalization of Solidarity. These talks were held by the state authorities with representatives of the Solidarity Movement and the Church. After preparatory talks lasting several months, the team concentrated around Jaruzelski agreed to settle the question of the renewed legalization of NSZZ “Solidarity” at the Round Table. In this way, Lech Wałęsa’s precondition was fulfilled, without which he refused to enter into official talks. On February 6, 1989, the Round Table Talks began in the Namiestnikowski Palace in Warsaw. The initial outline of a project for the political reconstruction of the state was agreed, and an important element of this project was to be changes to the Constitution. The amendments were passed at a session of the Sejm held on April 7, 1989. The new provisions on counteracting legislation restored institutions such as the President of the Republic and the Senate. The previously functioning office of the Ombudsman was elevated to the status of a constitutional institution, and a new body was created, the National Council of the Judiciary. The most important decision of the “Round Table,” apart from the changes to the system described above, was to hold elections

50 Wywiad z prof. Janem Ziemińskim m (wywiad przepr. S. Jadczyk), *Polityka* Nr 29 (1472), 20.VII.1985 p. 2.

51 Górski (2018): p. 193.

52 Górski (2018): p. 198.

to the Sejm and Senate.⁵³ As a result and according to the principles agreed during the Round Table talks, parliamentary elections were held in Poland on June 4 and 18, 1989. As a result, 460 deputies were elected to the Sejm of the People's Republic of Poland and 100 senators to the newly created Senate of the People's Republic of Poland. The agreements between the authorities and the Solidarity opposition, signed on April 5, 1989, significantly influenced the collapse of the communist system and political changes not only in Poland, but also in the whole of Central and Eastern Europe.⁵⁴

V. CONCLUSION

Taking into account the attempt to review the position of head of state on the basis of the constitutions of Poland and against the historical background, it can be seen that the powers and functions that were associated with this position changed dynamically in the presented period. The essence of the head of state cannot be analyzed without looking at the perspective of the sovereignty of the state; hence, special attention was paid to the analysis by focusing on functionality of this entity under the partitions. After the three partitions, the Polish lands were subjected to the sovereign power of the partitioning states. In these lands, short-lived Polish states were established at various times, but deprived of sovereignty. It has often been the case that constitutions were issued by sovereign monarchs of the governing states, so the sovereigns exercised their protection only on the basis of legal documents. In the interwar period, under the March Constitution, Poland was to be a democratic state, and the system was defined as parliamentary-cabinet style. After the April Constitution was enacted, the emphasis of the system shifted toward a presidential system. The competences of the head of state were thus adjusted to the particular system. During World War II, Polish authorities managed to leave the territory occupied by the occupying forces. On the basis of constitutional regulations, new authorities in exile were established. In the case of the People's Republic of Poland, the Council of States was given competences and functions traditional for the head of state. In many of these cases, the reality differed significantly from the formal regulations.

The international legal aspect is crucial here. In the doctrine of international law, a sovereign state should be able to determine its highest authority, which is not subordinate to other authorities and is capable of ensuring relations with other states, as well as representing it externally.⁵⁵ From the perspective of this international approach, as can be observed, the position of head of state in Poland has undergone numerous modifications.

⁵³ Górski (2018): p. 199.

⁵⁴ Beata Kołodziej: *Obrady Okrągłego Stołu* (Round Table Talks) <https://dzieje.pl/aktualnosci/obrazy-okraglego-stolu> (accessed. 04.12.2021)

⁵⁵ J. Ciapała (1996): p. 16.