

## The system of government in the Polish Constitution of 17 March 1921. Remarks to the essay by Professor Angela Orlandi.

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**Abstract:** The paper examines the form of government outlined in the 1921 constitution, from the perspective of the principle of the separation of powers. Special attention is paid to the influence exerted by the French model, as well as to the dysfunctional profiles of the Polish constitutional framework.

**Keywords:** Constitution of March, separation of powers, form of government, influence of the French model, dysfunctionality of the constitutional system.

As is well known, a system of government is understood to mean the interconnections between legislative and executive authorities, as well as the relationships within the executive power, i.e. the relations between the government and the head of state. Depending on how these relations are defined – as we know – two basic forms of government developed historically: a presidential system of government and a parliamentary (parliamentary-cabinet) system. The first written constitution in the world, the American Constitution, introduced a presidential system of government, while a parliamentary system was adopted in the Polish Constitution of 3 May 1791, which *expressis verbis* established the principle of the political accountability of ministers to the Sejm (the Chamber of Deputies and the Senate). I recall this because the main idea that accompanied work on the constitution of the reborn Polish State was to draw on – as far as possible – the "glorious tradition of the memorable Constitution of 3 May", as we read in the preamble to the March Constitution. It is therefore not surprising that among the creators of the March Constitution of 1921, there was a general consensus as to principles of the political system: sovereignty of the nation, the separation of powers and parliamentary rule, as the heritage of Polish legal and political thought<sup>1</sup>. Although the idea of borrowing the presidential system of government appeared at that time, it remained completely on the margins of the work on the constitution (it was the draft constitution by

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<sup>1</sup> W.Suleja, *Sukcesorzy Sejmu Wielkiego. Sejm Ustawodawczy 1919-1922. Między budową nowoczesnej Polski a partykularyzmem Polski*, [in:] *Przegląd Sejmowy* 1(150)2019, p.256.

Professor Józef Buzek, mentioned by Professor Orlandi). It is noteworthy – which was also emphasised by Ms Orlandi – that the constitutional debate covered various social groups and milieus, not only political ones.

Fairly important for the general acceptance of the parliamentary model of power in the drafts of the March Constitution were also the experiences of the political system at the dawn of independence. As early as in Józef Piłsudski's first decree of 14 November 1918 there was the statement that: "only the Sejm can be the creator of the nation's rights". The Sejm was to be convened as soon as possible. It should be stressed that – as Professor Orlandi rightly points out – the election to the Legislative Sejm based on the "five-part electoral law" (universal, direct, equal, proportional and anonymous elections) – produced a democratic representation of the entire society. The so-called Small Constitution of 20 February 1919, passed by the Legislative Sejm, recognised the Sejm as a "sovereign and legislative authority", to which the bodies of executive power, i.e. the Chief of State (Józef Piłsudski) and the government, were fully subordinated. The Chief of State, as the "supreme executor of resolutions of the Sejm in civil and military matters", was politically accountable to it. The Chief of State was to appoint the government "in agreement with the Sejm". The government was also politically accountable to the Sejm. It was a joint responsibility of the government as well as a personal responsibility of individual ministers. The Small Constitution of 20 February 1919 thus introduced parliamentary rule in its extreme form<sup>2</sup>. Just like the Small Constitution, the March Constitution did not specify the procedure for appointing the government – as Professor Orlandi rightly notes. In other words, both the tradition and constitutional practice determined that there was no alternative to a parliamentary system of government at the time when the March Constitution was drafted.

The problem for the authors of the March Constitution was obviously the choice of a modern model of parliamentary government, as it was difficult to transfer the political model of the 18<sup>th</sup> century to the 20<sup>th</sup> century. (Władysław Seyda's speech in the Sejm). This was explicitly admitted by the Constitutional Committee's chairman, Professor Edward Dubanowicz, who stated during a parliamentary debate that the Committee wanted to base the state system not on "attempts and experiments", but on the experience of its own country, and in particular on the experience of other countries. Therefore, the starting point for the Constitutional Committee in preparing its draft was the adoption of a system that had been tried and tested in at

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<sup>2</sup> K. Kaczmarczyk-Kłak, *System rządów w Polsce w latach 1918-1922*, [in:] *Studia Prawnicze KUL*, 1(73)2018, p.68.

least one of the larger states<sup>3</sup>. That is why it is not surprising that the content of the March Constitution drew on political systems in those countries whose constitutionalism had been favourably assessed by the legal and political elites of the reborn Polish state. As far as the system of government was concerned, the authors of the March Constitution followed the constitutional model of the Third French Republic, while the provisions on judicial power were based in many points on the wording of the provisions of the Austrian Basic Law on Judicial Power of 1867, the so-called December Constitution. Similarly, the provisions of the Austrian December Constitution on the general rights of citizens were reflected in many articles of Section Five of the March Constitution, entitled "General Duties and Rights of Citizens"<sup>4</sup>. The reference to the constitutionalism of the Habsburg Monarchy was due to the fact that its political model was favourably assessed in many aspects (also in the Austrian Republic established after 1918).

So what determined that the parliamentary system of government in March Constitution was based on the French model? Certainly significant was the fact that France was the only example of a country with a republican system, where the parliamentary system of government took the fullest shape. The republican form of state determined by the Act of Jędrzej Moraczewski's government of 1918 was never questioned afterwards. It was on the basis of the French system that the doctrinal principles of modern parliamentarism could be constructed, as in its general assumptions it corresponded to the Polish parliamentary tradition, which clearly treated with reserve a strong executive power (in France the parliament exercised legislative power directly and the executive power indirectly through the ministers, while in the Constitution of 3 May the Sejm ruled by means of elected government commissions, accountable to the Sejm). The system of the Third Republic proved attractive to the drafters of the Polish Constitution also for the reason that the head of state had little role to play in the structure of the executive power. The position of the President was limited by its dependence on the government through the institution of countersignature. It was therefore quite widely accepted that the President would be elected by the combined chambers of Parliament, following the French model, as it was the French experience of the Second French Republic which showed that

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<sup>3</sup> A.Kulig, *Kształtowanie formy rządów u progu niepodległej Polski (1917-1926)*, Warszawa 2013, p. 274.

<sup>4</sup> P. Czarny, *Einfluss des österreichischen öffentlichen Rechts aus der Periode der konstitutionellen Monarchie (1867-1918) auf polnisches Verfassungs- und Verwaltungsrecht in der Zwischenkriegszeit und der Gegenwart*, [in:] *Das Österreich-Ungarn der Jahre 1866-1918: ein herausragender Beitrag zum Schutze der Menschenrechte, Beiträge zur Konferenz, Straßburg 17.en 18.November 2017*, hrsg. A.Duranthon. C.Haguena-Moizard&K.Wojtyczek, 2019, p.220-228.

universal election of the President could be a mandate for a change in the state political system towards autocracy.

The conditions of the political situation at the time meant that the drafters of the March Constitution did not choose an active presidential model. Therefore, they ignored other models of parliamentary government, such as the model introduced by the German Weimar Constitution of 1919. The German experiment seemed too risky to them. They opted for a parliamentary model, in which the executive branch had no mechanism to counterbalance the political will of the parliament. The President was thus not given the right to dissolve Parliament on his own in the event of a conflict between the Sejm and the government. Thus, he did not have the position of a neutral authority playing the role of a political arbiter, but his actions were restricted by both the parliament and the government. The authors of the Polish constitution didn't use the advice of Robert Redslob, recalled by Professor Orlandi, who showed the advantages of the English model of parliamentary government<sup>5</sup>.

However, this remark should be supplemented with the comment that the draft Constitution prepared at the beginning of 1919 under the guidance of Professor M. Bobrzyński in the form of the so-called Questionnaire, which was the basis of the work of the Legislative Sejm, adopted a model of parliamentary rule in a version combining elements of the system of the Third French Republic and the presidential system in the United States. The creators of the Questionnaire, attaching great importance to the principle the tripartite separation of powers and balance between them, made a modification of the French parliamentary system by strengthening the political position of the President, but this idea was rejected by the deputies for the reasons indicated above. Thus, following the American model, the President was to come from a democratic, universal but two-stage election. The draft Constitution of the Republic of Poland prepared by Polish professors of law as part of the Government's Questionnaire modified the French parliamentary model by introducing a certain balance between the legislative and executive powers, which was a feature of American constitutionalism.

The modification granted the President the right of a suspensive veto over the acts of the two-chamber parliament. Within 30 days, the President was obliged to proclaim an enacted act or to return it to the parliament for re-examination. The re-enactment of an act by a two-thirds majority meant that the President was obliged to proclaim it without delay. The draft, however, in its reference to the Constitution of the Third French Republic, provided for a broad definition of the Government's political responsibility.

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<sup>5</sup> A.Kulig, *Kształtowanie...op.cit.*, p. 75-76.

Ministers bore parliamentary responsibility before both chambers for the general political direction of the government, jointly and individually “for their personal acts”. As in the case of the French Constitution, the draft did not specify the procedure for holding ministers politically accountable. Neither did the draft in question specify in detail the manner in which the Government was to be formed, which meant that the March Constitution adopted a solution similar to that of the French Constitution, leaving this matter to parliamentary practice<sup>6</sup>.

Although according to the March Constitution the President appointed and dismissed the President of the Council of Ministers, and ministers at his request, nevertheless the Sejm had the right to hold ministers politically accountable by a simple majority of votes. The fact that the March Constitution did not contain a detailed procedure for appointing the government – as Professor Orlandi rightly stresses – resulted in the emergence of a parliamentary custom whereby the government formed by the President asked the Sejm for a vote of confidence. The political practice following the introduction of the March Constitution showed that President Stanisław Wojciechowski entrusted the mission of forming a government to the person who was likely to win a majority in the Sejm. On the one hand, therefore, the process of forming a government was not easy due to the considerable fragmentation of the political forces in the Sejm, while on the other hand it was potentially easy to dismiss the government by passing a vote of no confidence. The practice of the political system in the first years after the adoption of the March Constitution showed that, as in the Third French Republic, there were governmental upheavals, which constituted, as it were, an inherent feature of French parliamentarism. Nevertheless, it was not treated by the authors of the March Constitution as a defect of the French system, since the Third Republic proved strong enough to be one of the victors in the First World War. Moreover, the adoption of the French political model was also to facilitate the building of a political alliance between Poland and France.

In conclusion, therefore, a fundamental question needs to be asked as to whether the system of government introduced by the March Constitution was inherently dysfunctional. Did its shortcomings result in a political crisis, which Józef Piłsudski's May Coup of 1926 was intended to counteract? The May Coup took place under the banner of fighting “parliamentocracy” (in Polish: *sejmokracja*), which was disastrous for the state, and the need to

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<sup>6</sup> See the draft of the Constitution of the Republic of Poland drawn up by the Questionnaire established by the Government on 25 January 1919 and debating from January to March of that year under the chairmanship of Michał Bobrzyński, 1919, the Jagiellonian Library, Rkp.8131 III, <https://jbc.bj.uj.edu.pl/dlibra/publication/488683/edition/502777/content>, accessed on 3 July 2021.

reform political life<sup>7</sup>. It should be noted that the instability of governments was not only a feature of the Polish model of parliamentarism. It was also present in those varieties of parliamentarism which provided for a brake or counterbalance to parliamentary hypertrophy, as was the case in Germany or Czechoslovakia. However, the constitutional practice was too short to fully assess the weaknesses of the system of government adopted by the March Constitution. Nevertheless, it is true that the drafters of the March Constitution consciously relied on a model of parliamentary government that assumed the supremacy of the parliamentary factor over government power.

At the same time, however, it should be noted that the model of parliamentary rule introduced in the March Constitution met with serious criticism from legal scholars before it even entered into force. Part of the criticism came from those who were involved in the preparation of the Questionnaire mentioned above. In particular, the incorrect implementation of the principle of separation of powers in the March Constitution was emphasised. It was argued that it was used only insofar as it served to inhibit the executive by the legislature, but not vice versa. In particular, it was regretted that the President was not given the independent right to dissolve the Parliament. It was stressed that a President elected by the Sejm and the Senate and having no right to dissolve the Parliament *motu proprio* had to be dependent on it. Critics of the system of government in the March Constitution found insufficient the solution according to which the President could dissolve the Sejm with the consent of the Senate, which was itself subject to dissolution if such consent was given.

The case of dissolution of Parliament by the President, as provided for by the Constitution, was considered unlikely. It was pointed out that this provision was faulty in terms of ensuring stability of the State authority. There were therefore questions asked about the actual potential consequences of depriving the President of the right to dissolve the parliament on his own: if the President had been in conflict with the Government, he would not have been able to grant it its resignation because he would have not found anyone in the Parliament who could form a Government without a parliamentary majority behind him. A new majority could only be formed by calling a new election. If, in turn, the Government had come into conflict with the Sejm, it would have no choice but to resign, as the President could not protect the Government from collapse by dissolving the Parliament. Thus, a strong conviction was expressed that the March Constitution did not introduce an important safeguard against the

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<sup>7</sup> M. Kowalski, *The Amendment of August 1926 to the first Polish Constitution of the Second Republic*, [in:] *Krakowskie Studia z Historii Państwa i Prawa* 2014;7(2), p.318-322.

omnipotence of the Sejm majority in the form of the Head of State's right to dissolve the Parliament.

To justify this view, reference was made to the example of the French system, which – as the argument went – was a typical state of governmental crises. However, if France nevertheless remained a strong state, this had to be attributed to the specific features of its internal relations, which were definitely lacking in Poland, such as an efficient administration and a politically well-informed society. This is why there were warnings that a system of parliamentary rule modelled on the French system might not work in the entirely different reality of post-war Poland. Poland, which was threatened from two sides, could maintain its independence – it was argued – only in the conditions of a well-organised state, with a strong Government as its most important link. In order to achieve this aim, it was proposed that the content of the March Constitution be changed in, *inter alia*, three points: the election of the President according to the American model, granting him the right to dissolve the Sejm and Senate on his own, and balancing the positions of both parliamentary chambers. Therefore, as soon as the March Constitution was passed, the system of government adopted in it was criticised, albeit with the hope that the Parliament elected on its basis would nevertheless be capable of organising a modern, strong and law-abiding state<sup>8</sup>.

It was not until the March Constitution came into force in the conditions of a certain political crisis, related to the assassination of President Gabriel Narutowicz or the withdrawal of Józef Piłsudski from state life, that doubts were raised as to whether the relations between Parliament, Government and President had been correctly defined. Critical assessment of the adopted model of government usually led to a proposal to strengthen the executive power at the expense of limiting the rights of the Sejm (e.g. by granting the President an independent right to dissolve parliament independently and limiting the Sejm's use of a vote of no confidence in ministers and the government).

Voices that the March Constitution should be changed in the above direction were clearly visible in the opinions expressed by Polish constitutionalists

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<sup>8</sup> See *Our Constitution*. A series of lectures organised by the School of Political Sciences in Kraków between 12 and 25 May 1921 with the participation of Wład. Abraham, Tad. Dwernicki, Stan. Estreicher, Wł. L. Jaworski, St. Kutrzeba, M. Rostworowski, St. Wróblewski and Fryd. Zoll, Kraków 1922 <https://kpbc.umk.pl/dlibra/publication/70156/edition/77775/content>, accessed on 3 July 2021.

and jurists in a questionnaire conducted in 1925 by “*Ruch Prawniczy, Ekonomiczny i Socjologiczny*” [The Legal, Economic and Sociological Movement] published in Poznań. The journal asked for a brief response to three questions: (1) what devices of our constitutional system function badly and cause adverse results, (2) in what direction is it desirable to change the Constitution, and (3) in what direction is it desirable and possible for the present Sejm and Senate to change the electoral law without changing the Constitution.

In most of the presented opinions there was a conviction that the most significant flaw of the March Constitution was the way it regulated the mutual relations between the Sejm and the Government, as well as the relations between the Government and the President. The greatest objections were raised as regards the fact that the Constitution did not guarantee a balance between the legislative and executive powers, since, on the one hand, the Sejm held all the legislative power, and, on the other hand, it was the source and regulator of the executive power. A similar domination of the representative body over the governmental power – as some critics pointed out – was unknown in any of the modern European constitutions. They even argued that the prototype of such a model could only be traced either in the principle of a sovereign absolute monarch, or in the French Convention of the revolutionary period.

This negative state of affairs was seen as a problem which might be rectified by amending the March Constitution as regards, *inter alia*, the method of electing the President by indirect universal elections, granting him a share in the legislative power, as well as the right to dissolve the parliamentary chambers. As far as the legislative power was concerned, the President was to be granted the right to object to bills submitted to the Sejm by the Government, as well as the right to a suspensive veto over the enacted acts. The lack of the President's power to dissolve Sejm was seen as a mistake, because in this way the executive power was deprived of a tool rightly regarded as a corrective and counterbalance to "parliamentary absolutism". The President should have not only the legal, but also the actual possibility of appealing at any time to the nation to find out what the will of the majority was at a given moment.

None of the critics of the time, however, advocated a rejection of parliamentary rule, but favoured its rationalisation in the political system, mainly by granting the President the right to dissolve the Sejm, since – as was repeatedly argued – he had to have in his hands a means by which he could "influence the disclosure and crystallisation of a specified parliamentary majority". The provisions of the March Constitution – according to its critics – had the negative effect of leading to the formation



of weak governments, as their functioning depended on a random and unpredictable parliamentary majority, since the Sejm passed a vote of no confidence in a government or minister by a simple majority. The right to dissolve the Parliament strengthened not only the President's position and authority, but also that of the government itself, which ceased to be "a ball thrown in different directions by the changing moods of the political parties, and became the representative of a certain political programme for which it demanded a clear support of the Sejm".

In contrast, the opinions that it would be premature to criticise the constitutional norms defining the relation between the legislative and executive bodies were rare. A minority opinion was that the existing constitutional practice had not demonstrated any particular need to grant the President the right of sanction, or a suspensive veto over acts, or to amend the provisions addressing to the nature and purpose of parliamentary liability of ministers. Others were not convinced by the argument that the constitutional practice had not yet proved that the model of relations between public authorities adopted in the March Constitution, and already tested elsewhere, was inadequate for Poland<sup>9</sup>.

The proposed changes of the March Constitution in the direction of limiting "exuberant parliamentarism" were carried out by the amendment of the Constitution of 2 August 1926<sup>10</sup>. The Act on the Amendment of the March Constitution modified six articles concerning budgetary matters, issuing regulations with the force of a statute, early dissolution of chambers, the manner of expressing a vote of no confidence, and the loss of a seat in the Sejm. The Act thus introduced a strict schedule for the budget work of the Sejm and Senate, failure to meet which by the chambers meant that the budget was to be binding in the form in which it had been prepared by the Government. The President of the Republic could dissolve the Sejm and Senate before the end of the term at the request of the Council of Ministers, but only once for the same reason. Therefore the Sejm lost the right to dissolve itself by its own resolution.

The President also had the right, during the period when the chambers were dissolved and until the Sejm reconvened, to issue regulations with the force of an statute in cases of emergency. These could concern all legislative matters with exceptions specified in the Act, such as amending the Constitution, the parliamentary electoral law or the levying of taxes. Regulations with the force of a statute lost their effect if they were not

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<sup>9</sup> A questionnaire on the revision of the Polish Constitution and the electoral law: <https://repozytorium.amu.edu.pl/bitstream/10593/19887/1/018%20Ankieta%20RPEiS%205%282%29%2c%201925.pdf>, accessed on 3 July 2021.

<sup>10</sup> Ibidem.

submitted to the Sejm within 14 days after the next meeting of the Sejm, or if, after being submitted to the Sejm, they were repealed by the Sejm. Article 6 of the August 1926 Amendment stated that a motion demanding the resignation of the Council of Ministers or individual ministers could not be put to a vote during the meeting of the Sejm when it was proposed. This provision protected against the passing of a vote of no confidence in a random manner by a small majority. This solution enabled the Government and the President to take behind-the-scenes measures, including using the threat of an early election, to defend the Government's policy<sup>11</sup>.

However, this "correction" of the system of parliamentary rule, aimed at establishing a certain balance between the legislative and executive powers, did not have a major effect in curbing the too frequent fluctuations of the government. Cabinet changes were thus, as it were, inherent part of the system of parliamentary rule until the April Constitution was adopted in 1935. What was important for the state, was the stability of this system of government, which made it possible to pursue policies in line with the interests of the majority of the society.

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<sup>11</sup> A. Ajnenkiel, *Polskie konstytucje*, Warszawa 1983, np.281 *ff.*