INSTITUTE OF PUBLIC AFFAIRS

„The present report constitutes an attempt to map the key developments of the Polish transition to democracy during the past 20 years as well as to examine the main threats and challenges for the future of democracy in Poland. The report concludes more than three years of the research conducted by the Institute of Public Affairs within the project "Polish Democracy Watch - Monitoring Threats to Polish Democracy". This project was initiated in 2007 within the "New Response" Programme of the Open Society Institute Think Tank Fund. Its aim was to support civil society think tanks responding to the rise of populism in the countries which entered the European Union in 2004--2006. Additional support for the project was provided by Trust for Civil Society in Central Europe".

The Institute of Public Affairs (IPA) is a non-governmental and non-partisan public policy think tank.

The IPA aims to:

- conduct research projects valuable for the public domain
- present and disseminate new policy proposals
- initiate public debates
- identify threats to the quality of public life
- act as a bridge between academia, the world of politics, the media and NGOs

The Institute of Public Affairs conducts policy research and analysis and develops policy recommendations. The IPA has a team of in-house experts as well as a network of associated experts from Polish and international academic institutions.
The research results are published as books, reports and policy papers. The IPA publications come to the attention of members of parliament and academic institutions, government officials, the media and non-governmental organisations. The Institute also organises seminars, conferences and public lectures.

THE INSTITUTE OF PUBLIC AFFAIRS
ul. Szpitalna 5 lok. 22
00-031 Warszawa
tel: (48-22) 556 42 60
fax: (48-22) 556 42 62
e-mail: isp@isp.org.pl

ISBN 978-83-89817-096-8

Democracy in Poland 1989–2009. Challenges for the future

INSTITUTE OF PUBLIC AFFAIRS

Democracy in Poland 1989–2009
Challenges for the future

edited by:
Jacek Kucharczyk
Jarosław Zbieranek

Poland
Democracy Watch

Democracy in Poland 1989–2009
Challenges for the future

INSTITUTE OF PUBLIC AFFAIRS

Democracy in Poland 1989–2009
Challenges for the future

edited by:
Jacek Kucharczyk
Jarosław Zbieranek

Poland
Democracy Watch

Warsaw 2010

INSTITUTE OF PUBLIC AFFAIRS
Law and Democratic Institutions Programme

Poland
Democracy Watch

This publication was published within the framework of the IPA project: "Poland Democracy Watch" financed by Open Society Institute.

Translation: *Anna Dzięgiel*

Proofreading: *Tom McGrath*

ISBN 978-83-89817-096-8

Published by:
Fundacja Instytut Spraw Publicznych
00-031 Warszawa, ul. Szpitalna 5 lok. 22
tel. (48) 22 556 42 60; fax (48) 22 556 42 62
e-mail: isp@isp.org.pl
www.isp.org.pl

Typeset, printed
Ośrodek Wydawniczo-Poligraficzny „SIM"
00-669 Warszawa, ul. Emilii Plater 9/11
tel. (22) 629 80 38; faks (22) 629 80 36
e-mail: owpsim@post.pl
www.owpsim.pl

Table of Contents

Jacek Kucharczyk

Introduction:
Polish democracy and the challenge of populism

The present report constitutes an attempt to map the key developments of the Polish transition to democracy during the past 20 years as well as to examine the main threats and challenges for the future of democracy in Poland. The report concludes more than three years of the research conducted by the Institute of Public Affairs within the project "Polish Democracy Watch - Monitoring Threats to Polish Democracy". This project was initiated in 2007 within the "New Response" Programme of the Open Society Institute Think Tank Fund. Its aim was to support civil society think tanks responding to the rise of populism in the countries which entered the European Union in 2004-2006. Additional support for the project was provided by Trust for Civil Society in Central Europe[1].

Achieving the EU membership meant that Poland and other New Member States were officially recognized as having fulfilled the so-called Copenhagen criteria of democratic governance, rule of law and protection of minorities as well as functioning market economy. At the same time, once these countries were admitted into the EU, the external pressure on the political class to adhere to the European democratic standards was lifted. As a result, the new members (especially Poland and Slovakia) witnessed the acession to power of parties previously surrounded by a kind of *cordon sanitaire* in fear that their participation in governement could derail EU membership negotiations.[2] Once the threat of membership denial was lifted, Eurosceptics and populists suddenly became politically acceptable for more

[1] See also Kolarska-Bobinska, Lena, Kucharczyk, Jacek and Jarosław Zbieranek (eds.), *Democracy in Poland 2005-2007*, IPA, Warsaw 2007.

[2] In case of Slovakia, the progress of negotiations could be achieved after the populist governement of Vladimir Meciar was voted out of office thanks to a concerted action of

mainstream politicians and parties. What is more, the mainstream parties could not resist populist temptation both in domestic and foreign policies – from fiscal irresponsibility in Hungary, to opposing EU treaty reform in Poland and Czech Republic. After all, the infamous "Nice or death" slogan - implying that Poland should veto EU constitutional Treaty it had previously helped to negotiate – was uttered in the Polish Sejm by a would-be Prime Minister from a liberal-conservative party rather than one of the representatives of the hardline Eurosceptics. Later on, the Presidents of Poland and the Czech republic were withholding their signatures under the Lisbon Treaty as long as they could, thus unncessarily extending the period of uncertitude over the EU institutional reform.

Even if EU enlargement can be seen as unleashing the populist tendencies in New Member States, it was not a backlash against European integration that fuelled this threat to democratic politics.[3] On the contrary, once safely anchored in the EU, the voters and the politicians turned to issues and demands earlier suppressed by the primacy of the accession process. Some social groups and their representatives, e.g. Polish farmers, who were among the greatest beneficiaries of membership, demanded that their income should be equalized with the incomes of their countreparts in Old Member States, irrespectively of great gap in productivity. In general, the calls for the redistribution of the benefits of economic transition had been favourably received by many voters. Solidarity versus (economic) liberalism became the winning slogan of Poland's 2005 parliamentary and presidential elections. Paradoxically, it was the succes of the economic transition to capitalism in the New Member States that became the driving force of the populist backlash against democracy.[4]

Closely related to economic populism was the depiction of the ruling elites, especially the political class, as corrupt, selfish and unpatriotic. In Poland, this resulted in the political popularity of the so-called "Fourth Republic", a call for fundamental systemic reforms and moral and political renewal, first made in 2005. These calls appealed to the perception shared by a high proportion of Polish citizens, many of whom saw corruption as the epitome of the "post-communist" period. Such a widely held popular perception helped the supporters of the "Fourth Republic" to blow the

a broad coalition of NGOs and proeuropean political forces, once again testifying to the powerful impact of the accession process on the state of democracy.

[3] Cf. Kucharczyk, Jacek and Joanna Fomina, „Poland After the 2005 Elections: Domestic Dicontent or EU Backlash?" in: Bútora, Martin, Gyárfášová, Oľga, Mesežnikov, Grigorij and Thomas W. Skladony (eds.) *Democracy and Populism in Central Europe: The Visegrad Elections and Their Aftermath*, IVO, Bratislava 2007.

[4] Cf. Gyárfášová Oľga, Mesežnikov Grigorij, Smilov Daniel (eds.), *Populist Politics and Liberal Democracy in Central and Eastern Europe*, IVO, Bratislava 2008.

problem of corruption out of proportion and to present it as a central political issue. They claimed that fighting corruption would by itself address any other societal problems and social concerns, including unequal income distribution, unemployment and even foreign policy. This, however, would require certain special means, which in turn necessitated changing the constitution, curtailing certain civil rights and extending the executive powers of the directly elected President. Such an extensive political reform would - according to its proponents - end the period of "post-communism" in Poland as well as its legal foundation, the Constitution of 1997, which speaks of the post-1989 Poland as the Third Republic. This would also spell the end of the rule of the political elites whose legitimacy came from the 1989 round table agreement between the representatives of Poland's communist party and the democratic opposition. The populists blamed these "round table" elites for all the social ills that befell Poland after 1989 while refusing to give them credit for all the achievements of the transition, culminating in the EU membership.

The third (after economic inequalities and corruption) driving force of populism in Poland during the last 20 years was xenophobic nationalism, often combined with political Catholicism. The political discourse, in which a 'true Pole' is an ethnic Pole and a Catholic, aimed to exclude from the political community not only the persons belonging to ethnic or religious minorities (including non-believers) but also sexual minorities.

The Catholic Church itself played an ambigous role in the Polish transition to democracy. As one of the most trusted institutions in Poland, it helped to legitimize the round table agreement and thus greatly contributed to orderly and peaceful transition of power from communists to the democratic opposition. During the first, partly-free elections in Poland in June 1989, the hierarchy and the rank and file priests sympathized and often aided the Solidarity activists. In the run up to the accession referendum, the Church, and especially Pope John Paul II, helped to neutralize the Eurosceptics, who opposed Poland's accession to the EU on both nationalistic and religious grounds, and who depicted Europe as morally decadent, atheist and a threat to national sovereignity. The fact that the Church supported European integration took the wind out of the Eurosceptic campaign and helped to assure a clear 'yes' to membership in 2004 referendum. At the same time, some currents within the Church symphatized with nationalist and Catholic fundamentalists, as it can be demonstrated by the toleration of and even tacit support for Tadeusz Rydzyk. This Catholic priest and redemptorist runs a media empire, which includes a radio (Radio Maryja), television network, a newspaper and a college. These outlets, operating under the auspices of the Church, daily reach millions of Poles with their message of xenophobia

and anti-semitism as well as distrust of anything 'non-Polish', thus providing populists with institutional backing and ideological support.

A deeper factor underlying this recurrent populist challenge to Polish democracy is the general deficit of trust within the Polish society. There is something of a sociological consensus today that one of the basic challenges for Poland's social and economic development is builiding up social capital, that is multiple social networks extending beyond family bonds and allowing people to act together to realise some common good. The general lack of trust that Poles express not only towards the democratic instituions they have built since 1989 but also towards each other can be seen as a major obstacle to building a more vibrant civil society as well as more people getting involved in politics. On both counts - the number of active civil society organisations and voter turnout - Poland lags behind not only the Western countries with longer uninterrupted history of democracy and civil society development, but even some of the other Central European states, which embarked on their journey towards Western-style democracy in 1989. This is why a broadly discussed government report "Poland 2030" lists building up social capital among one of the ten key developmental challenges for the next 20 years.[5]

At the same time, among the four Central European states that joined the EU in 2004, Poles, along with the Czechs, are among the most convinced that democracy building in their country after 1989 was a success. Such was the opinion of two thirds of Polish respondents surveyed in 2009 by the Institute of Public Affairs and its partners.[6] The same survey underlined, however, that in all four Visegrad Countries, public opinion remains divided as regards the evaluation of the transition, with younger, more educated, affluent and urban citizens being more appreciative of democratic freedoms won after 1989 than the elderly, less educated and more rural population. This divide still seems to determine the current shape of the Polish political scene. It remains dominated by two main parties: liberal-conservative Civic Platform and conservative-populist Law and Justice, whose electorates reflect the above-mentioned social differences.

It is on the background of these social attitudes and the continuing electoral support for populist politics that both the success and the shortcomings of Polish democratic institutions can properly be evaluated. Each chapter of the present publication provides an overview of one of

[5] For a summary of the report see http://www.zds.kprm.gov.pl/userfiles/Poland2030_Report_Summary.pdf

[6] Cf. Bútorova, Zora and Olga Gyarfásova, *Return to Europe: New freedoms embraced, but weak public support for assisting democracy further afield*, PASOS Brief No.3, 2009, www.pasos.org.

the key areas of democratic polity, including the constitution, the judiciary system, public administration, political party system, political finance, and local governement. In addition, we examine the two aspects of democracy which have recently gained prominence in Polish public debate: the position and role of women in politics as well as the state of the civil society. In each chapter the authors outline the key developments and milestones of the transition process as well as assess the threats and challenges for the future. Where possible and relevant, each study also presents recommendations for desirable changes and reforms in a given area.

On the basis of these studies, the readers should be able to form their own general views on the state of Polish democracy. There seems to be a general consensus in Poland that democracy building was successful in some areas, for example in the field of decentralization and local government. Other areas still require a lot of attention, including the legislative process, the judiciary or public administration. There is also a serious debate on the need to amend the Polish Constitution of 1997, starting with radical voices calling for a new "Fourth Republic" constitution, through proposals for important albeit limited changes e.g. regarding the powers of the President, to those who warn that tinkering with the constitution – which proved its value in the period of the populist government of 2005-2007 – could be dangerous for the quality and stability of Polish democracy. Clearly, more debate can be expected on this issue in the years to come.

As we are finishing this publication, Poland is still recovering from the shock of the Smolensk plane disaster, in which Polish President Lech Kaczyński as well as 95 other persons, including top public and military officials, perished. This tragic accident has been a kind of test for Polish democracy; its outcomes and consequences are still difficult to fully comprehend. The developments immediately following the crash seem to have proved the stability and resilience of Polish goverment institutions as well as constitutional provisions, which enabled an orderly transfer of power and responsibility in the many institutions affected. At the same time, some of the social and political reactions to the tragedy rekindled nationalistic populism, with its ideology of mistrust and hostility towards the country's democratic elites. The highly emotional reactions to the tragedy were greatly amplified by the media to the extent that this raises the question on their role and responsibilities within a democratic polity. The question of "whose watching the watchmen" becomes more and more urgent in the discussion on the state of democracy in Poland and elsewhere in Europe.[7]

[7] Cf. Schmitter, Philippe C. and Alexandre H. Trechsel, *The future of democracy in Europe: trends, analyses and reforms*, Council of Europe Publishing 2004.

Piotr Winczorek

The Polish constitutional system and the law making process

I

The adoption by the National Assembly (Sejm and Senate acting jointly), on 2 April 1997 of the Constitution of the Republic of Poland, and the acceptance of the Constitution by Polish citizens in a national referendum, ended the period of interim constitutional arrangements in Poland that had lasted since 1989. The arrangement consisted in the existence, at that time, of three normative acts of a constitutional rank, of which one dated back to the times of the People's Republic of Poland (1944 -1989; officially since 1952). That act, however was significantly amended in the years 1982-1989 by the incorporation of provisions establishing new or restoring formerly existing political system institutions(that had operated in the years 1921-1939), such as: constitutional accountability before a special body of the judiciary power – the Tribunal of State – of the highest state officials, the oversight of the constitutionality and legality of normative acts vested in the Constitutional Tribunal, the Ombudsman, who, in Poland, is known under the name of the Commissioner for Citizens' Rights, the Office of the President of the Republic of Poland (which had existed in the years 1921-1939 and in the following years in exile in London and in the territory of Poland in the years 1947-1952),the restoration of the second chamber of the Parliament – the Senate. The end of 1989 brought some important changes to the political system, when from the Constitution of 1952, still in force, most of the references to the political and economic system formerly dominant in Poland were removed, the system which the Constitution itself referred to as socialist and which was described by its opponents as a communist system.

The political system of the state, which has been given legal framework by the Constitution of 1997, has been shaped by its authors in such a way as to satisfy the following requirements:

a) to be consistent with the Polish traditions of a democratic state;

b) to nullify the negative political experience from the period of the authoritarian regime from the years 1926-1939, and, in particular, from the years 1944-1989, that is the period when Poland remained within the Soviet sphere of influence and was ruled by the communist party;

c) to express the European, democratic and liberal political trends, especially in the area of human and citizen's freedoms and rights;

d) to take into account both the positive and the negative political system experience after 1989;

It was therefore accepted that among the basic elements on which the political system of the Republic of Poland as well as the social and economic life of its citizens would be founded, the following ideas should be included: the sovereignty of the Nation understood as all the citizens of the country, the democratic state of law implementing the principles of social justice, the division and the mutual balance of the legislative power (the Sejm and the Senate), the executive power (the President and the Council of Ministers) and the judicial power (independent courts and tribunals), political pluralism, freedom of religion, philosophical and religious neutrality of the state, combining direct democracy with representative democracy, subsidiarity and decentralisation of public authority, protection of the rights of national minorities, freedom to conduct business activity and the guarantee of the right of ownership.

The 1997 Constitution contains a wide list of freedoms and human and citizen's rights. In its essence, and even with respect to some details, it is modelled on similar lists included in other modern European constitutions and on some international regulations. It includes personal, political, economic, social and business freedoms and rights, together with institutional guarantees ensuring their observance.

II

The political system of the Republic of Poland can be described as a rationalised parliamentary-cabinet system. The Government and its Head – the Chairman of the Council of Ministers (Prime Minister) is appointed by the President. However, in order to be able to take up and conduct the public activity attributed to it, it must obtain and retain during its time in office, the confidence of a parliamentary majority (the Sejm). It means, in

practice, that in Poland governments are formed by the political parties and their coalitions that have won a parliamentary majority in elections to the Sejm. The following actions are possible: to grant a vote of confidence to the government as a whole, to pass a vote of no confidence on the whole government or on an individual minister. If a vote of no confidence is passed on the whole government, it is effective only if the Sejm, with an absolute majority of votes, elects a new Prime Minister to replace the one that is removed. This principle, drawn from German constitutionalism (the so called constructive vote of no confidence) is an element of rationalising the parliamentary-cabinet system within the spirit of a chancellor democracy. Its introduction in Poland in 1997, together with other factors (for instance, a relative stabilisation of the configuration of parties in the parliament) has contributed to the extinction of the phenomenon which, in the years preceding the adoption of the current Constitution (i.e. 1989 -1997), constituted a permanent feature of political events in Poland – the transitory nature and instability of subsequent governments. At the same time, the Prime Minister has gained a relatively strong position within the government. He is the one to decide about the composition of the cabinet, appointments to the numerous posts in government administration and about the fundamental directions of the state policy. He may be, however, quite often impeded by the configuration of party forces supporting his government in the parliament.

The head of the state is the President. In the years 1989-1990 he was elected indirectly, by the members of the National Assembly. In that way the office was vested in gen. Wojciech Jaruzelski, who, however, resigned from his office after several months. Since 1990, the President is elected in direct elections, in one or two rounds, by universal vote, for a 5-year term, which can be repeated only once. The election of the President by universal suffrage has significantly strengthened its democratic legitimacy. That was the way in which Lech Wałęsa was appointed to the office (for one term), as well as Aleksander Kwaśniewski (for two terms) and Lech Kaczyński (in 2005; his current term ends in 2010).

The Constitution outlines the responsibilities of the President rather broadly. He is "the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority"[1]. He is the civilian chief of the Armed Forces, he "shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory." In fulfilling these tasks, the President uses

[1] [Translator's remark:] The quotations from the Polish Constitution have been taken from the official translation of the document published on the website of the Polish parliament at http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.

a number of constitutional and statutory competencies, of which the most important include: the right to appoint officials to numerous posts in the state administration (judges, ambassadors) and in the Armed Forces (e.g. the Chief of General Staff), ratification of international agreements, the right to exercise a veto with respect to statutes (the veto is subject to consideration by the Sejm and may be overruled with the three-fifths majority of votes), the right to send statutes and international agreements to the Constitutional Tribunal for verification of their compliance with the Constitution. His powers also include the shortening of the term of the parliament in certain situations (failure to pass the state budget act on time, lack of ability to form a cabinet) and calling early elections. The President has the right to introduce, on the motion of the Council of Ministers, martial law and a state of emergency. Under the rule of the 1997 Constitution, so far, neither the shortening of the parliament term nor the introduction of any of the above mentioned extraordinary measures has taken place.

Some of the President's powers are exercised as the so called prerogatives, that is powers the use of which shall not require the consent (countersignature) of the Prime Minister. Other powers, which however constitute the majority, are subject to such countersignature. That means that the head of the government may, with a legally binding effect, refuse to give his consent and thus the President's act of exercising the decision-making power does not take place. On the other hand, as a result of placing his countersignature, the Prime Minister assumes parliamentary responsibility for the act before the Sejm.

The President is not accountable to the parliament for his actions, he is, however, accountable to the Tribunal of State for violating the Constitution and the statutes as well as for the committing of a criminal offence. If convicted, he is removed from office. It may be mentioned here that such a situation has never happened. What is more, the mechanism of constitutional accountability is practically inactive. The Tribunal of State, over the entire period of its existence (that is since 1982) has issued a legally binding ruling only in one case (related to a minister). This does not result from the fact that situations in which the mechanism could be launched do not happen, but from the difficulties of a political-procedural nature connected with the necessity to get a very strong support in the parliament for any motion concerning charges against an individual official.

The Sejm and the Senate are the organs of legislative power, however their political system role is different. Both bodies are elected by universal secret suffrage for 4-year equal terms. The Sejm may shorten its term with the majority of two-thirds of the constitutional number of members. This means that the term of the Senate is shortened at the same time and

it is necessary for the President to call early elections to both chambers of the parliament. The members of the Sejm, who number 460, are elected in multi-member electoral districts on the basis of a proportional representation electoral system; the senators (numbering 100) – in two-member districts on the basis of the plurality voting system.

The Sejm is not only a body responsible for passing statutes but its role also includes oversight of the activity of the government and the state administration and appointing officials in numerous public authority bodies (e.g. the Tribunal of State and the Constitutional Tribunal). The role of the Senate consists, to a great extent, in its participation in the legislative process (more about that below).

An institution of direct democracy in Poland is a referendum. There are a few types of referenda, namely, national referenda: (a) approving certain changes in the Constitution, (b) in matters of particular importance for the state, (c) granting consent to the ratification by the President of an international agreement by force of which Poland transfers some of the competencies of its public authorities to an international body or organisation and local referenda: (d) on specific matters concerning a given unit of territorial self-government, (e) on matters concerning revoking of an executive self-government organ.

In the years 1989 – 2009, in Poland, 4 referenda took place involving the participation of all citizens. Two of them concerned matters of national character (see "b" above). They did not bring any results because of the lack of the required turnout of voters. Apart from that, a referendum was carried out to approve the new Constitution, which has been discussed above. A referendum also took place in which the citizens authorised the President to ratify the European Union Accession Treaty (see "c" above). Both referenda brought results which were positive and binding. Many more referenda are carried out locally. In most cases they concern the revoking of decision-making bodies of self-government (see "e" above). They rarely, however, bring binding results because of insufficient voter turnout.

A very important place in the political system of the Republic of Poland is held by the Constitutional Tribunal. The first composition of the Tribunal began their activity in 1986. The judges of the Constitutional Tribunal, numbering 15, are appointed from among distinguished lawyers for individual 9-year one-off terms. The Tribunal rules in matters concerning the compliance of international agreements, statutes and other normative acts with the Constitution (verification of constitutionality), and the compliance of executive regulations to statutes and other normative acts (e.g. normative resolutions adopted by the Sejm – such as, for instance, the Sejm By-Laws) also with statutes (verification of legality). It takes up cases on the motion

submitted by entities constitutionally authorised to do so, including, among others – the President, members of the Sejm, senators, Speakers of the Sejm and the Senate and the Prime Minister. Apart from the President, who can motion for verification of constitutionality of a statute before its signing and promulgation (and before ratification in case of an international agreement), other entities are only authorised to launch a post-factum verification procedure, that is carried out after a normative act comes into force. The Tribunal deals with nationally binding normative acts. Outside its jurisdiction are normative acts of the so called local law, that is, acts issued by local authorities (both government and self-government).

Until 1999, decisions of the Constitutional Tribunal determining the lack of compliance of a statute or a part of a statute with the Constitution could be overruled by the Sejm. Now, all the decisions of the Tribunal are final and universally binding. Apart from motions to the Tribunal, there are other legal mechanisms that make it possible to verify the compliance with the Constitution or legality of a law. They include legal questions addressed to the Tribunal by a court, concerning compliance or legality of a normative act with the Constitution on the basis of which the court should adjudicate in a case and also the so called constitutional complaint. The latter is available to any subject of law, who, having exhausted the judicial procedure, may apply for verification of constitutionality or legality of the normative act which constitutes the basis of the ruling issued by the court in his or her case. The number of cases flowing into the Tribunal on the basis of motions, legal questions and constitutional complaints is enormous and grows every year. That creates considerable difficulties causing delays in the examination of cases by the Constitutional Tribunal. On the other hand, however, it shows the great trust that is placed in this institution.

Apart from verifying the constitutionality and legality of normative acts, the Tribunal has the right to delegalize political parties and to settle competence disputes between the highest constitutional organs of the state. While it has never had an occasion to express its opinion on the former, it has issued only one ruling concerning the latter (in 2009). The case involved a dispute between the President and the Prime Minister as to which of them should represent Poland during a meeting of the European Council of the European Union. The Tribunal decided that in that case the head of the government had the priority but that the President could also take part in it. However, agreeing the official position of the state on matters discussed during the meeting is, according to the Constitution, a responsibility of the Council of Ministers.

The Constitutional Tribunal, as it follows from the doctrine of law, legal provisions and its own declaration is the so called negative legislator. That

means that it shapes the legal system in force only by removing from it the unconstitutional or illegal regulations; it does not introduce any norms established by itself into the system. However, if we look closer at the body of the Tribunal's decisions over the 25 years of its operation, it will turn out that it is a very important element of positive legislation, primarily because of its interpretation activity. The outcomes of this activity are taken into consideration by courts of all instances and by law making bodies. On the other hand, however, it is sometimes accused of excessive activity that is not supported by a sufficient democratic authorisation.

Beside the tribunals, the judicial power is in the hands of independent courts and independent judges. Apart from the common courts adjudicating, among others, in criminal, civil and family cases, there are also administrative courts and military courts. The structure of the judicial system is multi-tiered and hierarchical. At the top, there is the Supreme Court, adjudicating mainly as a court of cassation. All subjects of law have the right to a court hearing in at least two-instance proceedings.

In a presentation of the general outline of the Polish political system under the rule of the 1997 Constitution, the territorial self-government should also be mentioned. It consists of local bodies operating on the following levels: *gmina* - municipality (the lowest basic level), *powiat* - county and *województwo* - province. The self-government bodies are principally divided into two categories – those elected by universal suffrage, collective decision-making bodies (issuing resolutions) that is municipality/town and district councils and provincial assemblies as well as one-person executive bodies, that is heads of the municipalities [*wójt*] (mayors or presidents of towns), heads of districts [*starosta*], governors of provinces. At the lowest level, the executive bodies are elected by universal vote, and on the higher levels – the election is made by legislative bodies. The territorial self-government is an institution which, under the Constitution, has its own responsibilities, powers and sources of funding independent of government administration. The self-government is subject to the supervision of government administration only with respect to legality issues and its independence is protected by courts.

Unlike in the case of legal regulations governing the decision making institutions of the national level, the political system structure of the territorial self-government as well as its functioning generally receive a positive assessment. There are, however, voices that in future the right direction should be towards centralisation and making the public sphere more etatist rather than decentralising it. Such position is represented primarily by some right-wing and anti-liberal groups.

III

The Constitution of the Republic of Poland of 1997 establishes the so called closed system of sources of law. It means that only the normative acts explicitly listed by the Constitution are treated as binding in Poland. The system of the sources of law is divided into two parts: the acts of universally binding law and the acts of law of internal character. The former are binding to all subjects of law, the latter are binding only for the institutions and public officials reporting to the bodies issuing a given act. The acts of internal law cannot impose any obligations on the citizens. The legal system is hierarchical. The highest normative act in Poland is the Constitution, then follow the ratified international agreements, statutes and executive acts issued on the basis of the statutes, that is executive regulations. A high position in the system is held by the acts of secondary European law as they have priority over statutes. In addition, the category of universally binding law includes also the acts of local law issued by organs of territorial self-government and government administration which are in force in the territory of a given administrative unit. The acts of law of an internal nature may have various forms, e.g. ministerial orders, resolutions of the Sejm and Senate, orders of the heads of government or self-government administration units, etc.

The Constitution, apart from one exception, does not recognise any normative acts of a rank of a statute issued by organs of state other than the parliamentary ones. The exception are regulations with the force of an act of parliament issued by the President during the martial law. No such act has been issued so far. It should also be emphasised that the Constitution introduces only two types of statutes – ordinary statutes and statutes amending the Constitution; organic laws, for instance, are not known in Poland.

The basic legislative procedure is as follows: a draft of a statute may be submitted to the Sejm by: the President, a group of Sejm members, the Senate, the Council of Ministers and citizens after having collected one hundred thousand signatures. The draft proceeds through three stages (the so called readings) during plenary sessions of the Sejm and in the Sejm committees. Amendments may be added to it by those who submitted the draft, by the Sejm members and the Council of Ministers. Finally, the draft together with the adopted amendments is subjected to a vote in the Sejm during the third reading and it is considered adopted if the majority of votes is cast for the draft in the presence of at least half of the constitutional number of Sejm members. The statute passed in this manner is then sent to the Senate. The Senate may decide that the draft should be accepted without amendments, may propose to reject the statute in full or to introduce

some amendments. In the case of the first instance, the statute is sent to the President for signature. In the other two cases, the statute returns to the Sejm which may reject the proposals of the Senate with the absolute majority of votes. If it does not do so, the statute is lost as a whole or it receives the contents compliant with the Senate amendments. Then the statute is sent to the President. The President may sign it without any objections, he may send it to the Constitutional Tribunal before signing it or he may veto it. If the Tribunal decides that the President's motion is groundless or if the Sejm rejects the President's veto, the President is obliged to sign the statute. The signed statute is officially promulgated in the Journal of Laws and comes into force with a vacatio legis of, in principle, 14 days. On the basis of the statute and for the purpose of its enforcement, the bodies indicated therein (mainly the Council of Ministers, the Prime Minister) and within the timeframe set by the statute, shall issue the executive regulations.

The number of normative acts issued in Poland has been growing rapidly. Every year at least a few scores of statutes are passed. In addition to these there are numerous comprehensive acts of European law and a lot of executive regulations to domestic statutes. The hypertrophy of the law-making activity is admittedly a common phenomenon, yet in Poland it is particularly acute because of the relatively low level of legal culture and knowledge in the society and the deficiency of legal services for the general public. Attention should also be drawn to the frustrating changeability of law and to its complexity. It often happens that a given normative act is amended a few times or even more than ten times over the period of one year. In addition, a deteriorating technical and legislative quality of the law may be observed as well as a phenomenon of treating the law instrumentally, both when it is created and when it is applied. It is often the case that the law does not satisfy the needs of the society but only reflects the current expectations of political parties and various pressure groups.

All this forms a discomforting picture, both from the point of view of the interests of the state and individual citizens. The condition of the law in Poland is constantly criticised by numerous civil society organisations, lawyers' circles, journalists, academics and even politicians themselves, who as members of the Sejm or Senate, actively participate in creating the law.

It is therefore proposed to improve the law making process, primarily, by stronger supervision of the government which has at its disposal an appropriate team of professional legislators. Within the government structures, there is a professional Legislative Centre, supported by the Legislative Council, which consists of authorities on the doctrine and practice of law. The role of the Legislative Centre is to prepare government drafts of proposed laws, based on working outlines developed by individual ministries.

A serious dilemma of Polish legislation is the participation of the members of parliament in direct drafting of laws, mainly by exercising their right to motion amendments to drafts submitted by the government. In Poland it is not possible to link the vote of confidence for the government with adoption of statutes in the version proposed by it. The government has very limited possibilities to prevent the "wrecking" of its drafts by members of parliament. In fact, the only measure, apart from political and disciplinary influence exerted on the members of parliament representing the ruling party or coalition, is to withdraw the government draft from the Sejm before the completion of the second reading. We, therefore, are dealing here with a political system issue which consists in a clash of two values – parliamentary democracy with professionalism and effectiveness in making laws. The problem is even more acute as Polish parliamentarians very often use their right to legislative initiative and the number of drafts they propose equals or even exceeds the number of those proposed by the government.

IV

The Constitution of the Republic of Poland of 1997 belongs to the category of fixed constitutions. It can only be changed by an act of parliament passed by a two-thirds majority of votes by the Sejm and approved by an absolute majority by the Senate. Over the whole time it has been in force, it has only been amended twice and in matters of secondary importance. However, numerous proposals to introduce significant changes to the act do appear.

The proposals are accompanied by two types of justifying arguments. The first type is basically related to the negative assessment of this Constitution made in axiological and ideological terms. Already during the work on the draft of the Constitution, as well as in the period directly preceding the approval referendum, it was attacked, first of all from national-Catholic and Euro sceptical perspectives. The objections were that it did not take into account, to a sufficient extent, the traditional Christian values of Poland and did not ensure protection of Polish sovereignty. That type of arguments corresponded with suspicions that it was too liberal in the area of human and civil rights and freedoms and was not "communal" enough (in a sense of expressing solidarity), and that it established a political system with a state leadership that was too weak. Hence, proposals appeared to have completely new constitutional provisions, which, in view of their authors – originating mainly from national right-wing circles – could remove such deficiencies. In the sphere of political solutions, the proposals went in the

direction of strengthening the presidential power, sometimes following the model of the French 5th Republic or the regulations adopted in Poland after 1926 and in 1935 (amendment of the 1921 Constitution made in 1926 and then a new Constitution adopted in 1935). Currently, this sort of criticism against the 1997 Constitution of the Republic of Poland is voiced much more rarely, which does not mean that it has stopped altogether.

The other type of arguments justifying changes is connected with a pragmatic assessment of the functioning of the solutions adopted by this Constitution. Sometimes, however, the criticism does reveal political overtones related to current political struggle for power and influence between political parties and their leaders.

Such arguments were particularly common in the years 2005-2009. To a great extent, they are a consequence of the political fight for leadership of the state between the current – Prime Minister and the President of the Republic. A reflection of that was the ruling of the Constitutional Tribunal, referred to above, concerning the conflict of competence. In order to end the disputes, which, according to some observers constitute an inherent element of the logic governing the current political system, it is proposed to make the Polish political system either clearly presidential in character (even following the US model), or definitely chancellor in nature (modelled on the German system). Another idea is to introduce statutory clarifications referring to the scope of responsibilities and competence of both the government and the presidential branches of the executive power. Recently (Autumn 2009) a proposal has appeared to limit the powers of the Polish President's office, among others, by abandoning the procedure of electing the President by universal suffrage (he would be elected by the Assembly of Electors consisting of members of the Sejm, senators and representatives of provincial assemblies) and by making it easier to overrule the President's veto against statutes.

It may be the subject of debate to what extent those assessments and proposal resulting from them reflect any real deficiencies of the political system and to what extent they are a consequence of a poorly developed culture of co-existence (cohabitation) between the two centres of power (the government and the president) representing different ideological sympathies, different temperaments and well developed ambitions for political domination. Sympathies, temperament and ambitions seem to be related to personalities of the politicians who are in power at a given time and do not necessarily arise out of constitutional provisions. After 1989, various periods of cohabitation of the government and President representing different ideological and political inclinations have taken place in Poland (e.g. during the presidencies of Wojciech Jaruzelski and Aleksander Kwaśniewski) and

were not connected with any particular tension between those two branches of the executive power. The difficulties related to such cohabitation have been particularly strongly visible since 2007.

The functioning of the legislative power branch is quite frequently criticised. I have already mentioned some reasons of such criticism in part III of this paper. The negative assessment of the legislative process is accompanied by criticism of its main actors – the members of the Sejm and the senators. Such criticism is not typical only for the Polish situation. It is therefore argued that members of parliament do not represent appropriate level of knowledge and civil morality; they sometimes take part in shameful scandals, and even commit offences. Hence the proposals (some of them already implemented) to limit the parliamentary immunity and introduce a ban on running for a Sejm or Senate seat for people convicted to imprisonment for offences prosecuted ex officio.

Proposals to introduce other changes to the Constitution also appear. The two chambers of the parliament, restored in Poland in 1989, in view of the critics of such a system, have not proved to be the best solution. Therefore, the abolition of the Senate is suggested or at least a reduction of the number of senators. This proposal is linked with a suggestion to reduce the number of Sejm members (to 230). Such moves are motivated by the willingness to make the operation of legislative bodies more efficient and to reduce the cost of their maintenance. The abolition of the Senate would, however, be an act that would be politically doubtful and sensitive. One must remember that it did happen in Poland before, following the 1946 referendum rigged by the communist authorities.

A lot of interest has been raised by the proposal to abandon the proportional representation system in the elections to the Sejm (and to legislative bodies of the territorial self-government) carried out in multi-seat electoral districts and to replace it with the principle of plurality voting in single-member districts. The proponents of such a solution believe that it would strengthen the bond between the voters and their electorate, would make them more accountable and would limit the influence of political parties on the composition of representative bodies, which is today sometimes described as harmful. To introduce the system of plurality voting in elections to the Sejm would require a change to the Constitution, in the case of self-government legislative bodies it would entail changes in the appropriate statutes. Whether they would bring the results expected by their proponents is a matter for discussion.

Leaving aside the less important proposals for constitutional reforms, one may ask whether carrying out such reforms is politically possible. It seems that right now the political climate is not very favourable. Political parties

and their leaders make contradictory statements concerning the scope and the character of the reforms. What one influential political party supports, another fiercely fights or at least expresses the lack of interest in the matter. That applies, for instance, to strengthening the position of the President in the political system or to changing the principles of electoral law.

It is also difficult to see an atmosphere of constitutional patriotism surrounding the Act of 1997, mentioned and expected by Jurgen Habermas. This does not mean, however, that a constitution is not able to evoke any positive attitudes or emotions in Polish society. The 3 May Constitution of 1791, which never came into force (in 1795 Poland lost its independence to the neighbouring powers) has been held in Poland in great respect and is universally believed to be one of the most important documents of Polish statehood in history.

V

In the opinion of the author of this paper, the 1997 Constitution of the Republic of Poland is not in itself the cause of political difficulties and the not very efficient operation of the state institutions and mechanisms. At least two circumstances should be taken into account here. First, in Poland we are dealing with a poorly developed although slowly improving, culture of democratic and civil life. Progress in this area may bring about a proper balance between legal-constitutional solutions and the knowledge, skills and inclinations of citizens and career politicians. That balance may make the mechanisms of political system, not so badly designed after all, operate much more effectively than before. Secondly, one should not forget that, as in other countries, the constitution of the state is not just the formalised provisions but also customs, practice and usage. They play the role of a lubricant that reduces the danger of jamming in the mechanism of political system. Such customs are also being formed in Poland (the role of the Constitutional Tribunal is important here), which allows us to assume that at least our troubles of today will become just a memory, although it is quite certain that new problems will appear, that have until now not yet been recognised.

After more than ten years of the operation of the 1997 Constitution, one may start to consider the advisability and directions of future changes. However, in the view of the author of these words, it is not necessary to abolish this Constitution and adopt a new one to replace it, introducing political system solutions completely different from those currently in force. In particular, it would be a mistake to introduce a presidential system in Poland in any of its varieties. Apart from the United States of America,

such a system has never worked anywhere. If it was established, it has often led to various types of authoritarian regimes. The developments in Poland would be no different, as here, in some circles, there still persists a myth of the "authority with strong muscles", identified with the rule of a "strong man" with personal charisma. I believe that in Polish social conditions, the most appropriate system of power, consistent with the national political system tradition is the system of moderate authority, institutionalised (and not personalised), divided into the sections of state apparatus that control one another.

It is with moderate sympathy that I view the proposal of going back to nominating the President not by universal suffrage but by the election vested in the National Assembly. And I would not assume either, that it should be necessary to limit the decision-making powers of the head of state, for instance by making it easier for the Sejm to overrule the President's veto. A review of constitutional regulations adopted by the new EU members states (e.g. Lithuania, Estonia, Romania, Czech Republic) allows me to draw a conclusion that the scope of presidential power provided by them is similar to that of the Polish Constitution, regardless of the way in which the head of state is elected (directly or by the Parliament).

I am not convinced that it is necessary to make the constitutional provisions describing the relations between the President of the Republic and the Council of Ministers and its Chairman more precise. In my opinion they are sufficiently explicit. There is no doubt that the Constitution vests the right to carry out domestic and foreign policies in the government. What is more, it establishes a presumption of responsibility vested in the government in all matters related to the day to day management of the state. The President has important functions to play in those areas and those roles are constitutionally indicated by defining his decision making powers (including the prerogatives). By respecting the contents and the limits of those regulations it should be easy to avoid disputes between the two sectors of the executive power – the presidential and the government ones.

Even though a proposal to introduce a plurality electoral system in the elections to representative bodies at all levels seems compelling, I am not sure whether it would bring the expected results of freeing the members of parliament and councillors from the pressure of their native political parties and whether it would purify the political life by stamping out petty party politics and lobbying of all sorts. The examples of the states which have known and practiced the plurality system elections for decades, such as Great Britain, USA or France are not encouraging in this respect.

In spite of the appeals to completely abolish the constitutional institution of the formal parliamentary immunity, I would opt for leaving it in the

existing form. The formal immunity protects the members of the Sejm and the senators from criminal prosecution unless it is waived in individual cases by the Sejm or the Senate (respectively) or the member of the parliament chooses to renounce it. Lack of such protection could be used against the members of the Sejm or Senate in order to persecute or intimidate the opposition. It is therefore better to keep it, with all its deficiencies, as an element of the members of parliament normative kit. And in fact, it is more a tool for protecting the rights of the parliament as a whole rather than the privileges of its individual members.

I do think, however, that certain constitutional changes or reforms will be either necessary or desirable. Among the necessary ones, the first to mention should be the abolition of the provisions determining the existence of the national currency in Poland, provisions concerning its emission by the National Bank of Poland and authorising a body of that Bank, the Monetary Policy Council, to carry out the national monetary policy. Without repealing those provisions it will be impossible for Poland to join the Euro zone. One should, however, bear in mind that having its own currency is considered by a part of political elite and the public to be a symbol of the state sovereignty. Therefore the introduction of such a change may meet with strong resistance of those who perceive sovereignty in traditional terms.

Among the desirable changes I would list in particular the following:

a) Abolishing the Tribunal of State as a body of which a lot had been expected and which turned out to be a dead institution. The point is not to abolish impeachment as such, and even less so, the constitutional accountability. Adjudication in those matters could be transferred to the Constitutional Tribunal or the Supreme Court;

b) A reduction of the number of the members of the Sejm and Senate could be considered, although not as radical as some political groups propose. The reduction should be designed in such a way as to improve the efficiency of the parliament's functioning;

c) Another change concerning the parliament could consist in transforming the Senate into a chamber representing self-government communities, especially the territorial ones. The existence of two chambers based on universal representation of the sovereign may raise doubts;

d) It would be desirable to make the legislative process more efficient. In this respect, various solutions are possible, although each of them would evoke criticism. The first could be to introduce – within the scope limited as to the subject matter and under the supervision of the parliament – law creating acts of a rank of a statute (decrees) issued either by the President or the Council of Ministers. The second would be to introduce (also in the scope limited as to the subject matter) a link between a vote of confidence for the

government and adoption of the draft statutes proposed by it. The third could be to limit the freedom of the members of the Sejm to adopt amendments to government drafts;

e) The institution of a national referendum on matters important for the state has not been very fortunately designed. Even if a referendum brings a valid and binding result, it does not cause, in an unavoidable way, changes in statutes, even if the sovereign clearly orders that such changes be made. In order for such changes to be effected it is necessary to pass an appropriate statute. The deputies, however, are not bound by the instructions of their voters. They are *de facto* bound by the instructions of the management of their own parties. Thus it may happen that they will not yield to the verdict of the referendum. It will remain unenforced, even though it is constitutionally binding. In Polish law there is no such thing as revoking a member of parliament; voters are not able to shorten the term of the parliament by a legal procedure in order to "punish" the Sejm for insubordination. They do not have a possibility to pass a statute by-passing the parliament. The only case where a binding result of a referendum replaces a statute is when the citizens agree to ratification of some international agreements. An option should therefore be considered of giving them (in a limited number of cases important from the political system point of view), the right to adopt statutes by way of national referendum, passing over the Sejm and the Senate;

f) The institution of constitutional complaint becomes sometimes an object of criticism. It is used by those who (having exhausted the judicial procedure) wish to question the compliance with the Constitution of the normative act on the basis of which the court has ruled in their case, as long as the matter concerns the human or citizen's freedoms, rights or obligations described by the Constitution. Such a regulation makes the access to the Constitutional Tribunal very difficult for the interested parties. The complaint concerns not so much the violation by the court of the constitutional freedoms and rights (limits of the obligations), as their violation by the normative act used by the court in a given case. It could therefore be considered whether a complaint should not be introduced concerning directly the violation by the court of the constitutional freedoms and rights (limits of the obligations). That, however, would probably mean a vast increase in the number of cases sent to the Tribunal, which even now finds it extremely difficult to cope with all the cases sent to it for resolution;

g) The Constitution of the Republic of Poland contains a wide list of freedoms and especially rights – economic, social and cultural. In fact, a significant part of the provisions concerning them do not establish subjective rights of an individual but indicate the directions for state policies. This is, for example, the case with Art. 65 paragraph 5, which reads, "Public

authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention." Norms of this type (constitutional programme norms) may raise expectations among citizens which the state is not able to satisfy. This diminishes the importance of the Constitution. In my view, such provisions (if they were to remain in the Constitution at all) should be moved to a separate chapter devoted to the main directions of the state policy.

As it can be seen, I am not proposing any far-reaching changes. It is rather the matter of certain adjustments. In the case of the Tribunal of State – it is the matter of cutting off the withered branch of the Constitution, and in the case of the national referendum – to revive it by grafting new invigorating shoots.

Postscript

After I had completed the above text, on 10 April 2010, an unprecedented event occurred that unexpectedly made it necessary to use the extraordinary provisions of the Constitution. On that day, the President of the Republic of Poland died in a plane crash, together with his wife and a number of senior state officials. Among them were: the Ombudsman, the President of the National Bank of Poland, the Chief of the General Staff of the Polish Armed Forces and the commanders of the infantry, air force and navy of the Polish Armed Forces, the heads of the President's Chancellery and the National Security Bureau. A number of the Sejm deputies and senators also died in the crash.

Art. 131 of the Constitution instructs that, in the case of the death of the President of the Republic of Poland, his duties are temporarily discharged by the Speaker of the Sejm until the organisation of elections of a new President of the Republic. This incumbent, who remains on as the Speaker of the Sejm, has the right to take all the decisions that are constitutionally within the President's competences, with the exception of terminating the term of office of the Sejm and the Senate. It is also the Speaker's responsibility to announce the schedule of early presidential elections. They must be announced within 14 days after the death of the President and must be held within sixty days following this announcement. The following circumstances after the crash of April 10th 2010 additionally complicated the matter further. Presidential elections had already been planned for the autumn of 2010 according to the constitutional timetable; the election campaign is currently

underway and the acting President, the current Speaker of the Sejm who had earlier been selected by his party to contest the expected autumn election continues to campaign for this office.

An issue or dilemma arose about whether a person temporarily performing the duties of the President should (in a political sense) exercise the presidential powers in full, for instance with regard to appointments or with regard to the legislative process. Does such a person, without a mandate received as a result of elections, have sufficient legitimacy to carry out important authoritative decisions? The Sejm Speaker, as Acting President, has exercised some of these powers, especially, as in some cases, he needed to fill vacancies created as a result of the tragic plane crash; one example would be filling the posts of the head commanders of the Polish Armed Forces.

This was the first time, under the 1997 Constitution, that the Sejm Speaker has replaced the deceased President. Such a situation did take place, however, immediately after the regaining of independence by Poland in 1918, when, in 1922, the Speaker of the Sejm took over the duties of the assassinated President of the Polish Republic. Yet, a situation in which so many leading state officials have died simultaneously has no precedent in Polish history and this unique scenario has put the constitutional provisions through a stern test. These legal solutions have confidently passed such a test and contributed to the equilibrium, preservation and continuation of the Polish state.

Basic bibliography:

Constitutional Essays: (ed.) Mirosław Wyrzykowski, Institute of Public Affairs, Warsaw 1999

Spreading Democracy and Rule of Law? The impact of EU enlargement on the rule of law, democracy and constitutionalism in post-communist legal orders; (eds) W. Sadurski, A, Czarnota, M. Krygier, Springer 2006

Wojciech Sadurski: Porządek konstytucyjny (in): Demokracja w Polsce 2005 – 2007 (eds) L. Kolarska-Bobińska, J. Kucharczyk, J. Zbieranek, Institute of Public Affairs, Warsaw 2007, pp. 13-71

George Sanford: Democratic Government in Poland. Constitutional Politics since 1989, Macmillan Publishers Ltd 2009

Adam Bodnar

The judiciary in Poland after 20 years of transformation

> *"Only an impartial judge, performing his function in the independent court may give a guarantee that everybody finally will find the law in his/her own case"*
>
> *Andrzej Rzepliński*[1]

Introduction

In the Polish People's Republic the judiciary was not independent and separated from executive power. It had a strict role to perform in a socialist country.[2] Nevertheless, there were many examples when judges tried to be independent in thinking and adjudicate cases by applying legal positivism, i.e. with reference to legal provisions and by avoiding any political considerations or constraints. Such an approach allowed for the building of

[1] „Jedynie bezstronny sędzia, sprawujący swój urząd w niezawisłym sądzie może dać gwarancję, że każdy w końcu znajdzie prawo w swojej sprawie". Andrzej Rzepliński, Sądownictwo w PRL [Judiciary in the Polish People's Republic], 2. Edition, Polonia Book Fund Ltd, London 1990, p.154.

[2] The courts duties were stated in Article 68 of the 1952 Constitution and provisions of the Public Courts' Organization Act. The role of the courts was to safeguard the political system of Poland, protect the achievements of the working people, guard socialist legality, public property and civil rights and punish criminals. The duty of the courts was also to educate citizens in being faithful to their homeland, observing the principles of socialist legality, being responsible at work and care for public property. Cf Zbigniew Resich, *Basic principles of the administration of justice and civil procedure in People's Poland*, [in] Leon Kurowski (ed.) *General principles of law of the Polish People's Republic*, Polish Scientific Publishers, Warsaw 1984, pp. 231-248, on p. 233. See monograph on this topic: Andrzej Rzepliński, Sądownictwo w PRL [Judiciary in the Polish People's Republic], 2. Edition, Polonia Book Fund Ltd, London 1990

judicial elites, independent in thinking, which could later on serve properly in conditions of a democratic regime.

The process of reforms in the judiciary started well before 1989, with the establishment of the Supreme Administrative Court in 1980, passing a new law on the Supreme Court in 1984, and later on – with establishment of the Constitutional Tribunal, the Tribunal of State and the Commissioner for Civic Rights. The emergence of this institutions had a crucial impact on later changes, as those institutions were the first which analyzed activities of public bodies in the light of constitutional principles.

During the Round Table Talks the judiciary was one of the most important topics discussed. It resulted in serious constitutional reforms as well as in passing on 20 December 1989 of laws derogating various legal institutions, which were used for political control over judiciary (e.g. supreme supervision by the Minister of Justice over courts, power to issue general interpretations of law by the Supreme Court [*wytyczne*], the possibility to remove judges from posts). At the same time, organs of judicial self-government and the National Council of Judiciary were established.

One of the most fundamental reforms undertaken in 1989 was the amendment to the Constitution of 1952 and by stating that the Republic of Poland is a democratic state ruled by law, as well as guaranteeing that the judiciary is one the branches of power, separate from the executive and legislative branch. This constitutional underpinning of the judiciary allowed for the process of its smooth transformation towards the judiciary of the democratic state ruled by law. It is specific for Poland that in 1989 there was no radical or revolutionary move with respect to judiciary. Since 1989 the judiciary has remained, both structurally and politically, the least transformed branch of government.[3]

However, the systemic change of law and the economy has caused millions of cases to flow into the courts. The judiciary was not prepared organizationally to deal with such a rise in cases. As a consequence, the judiciary started to suffer from the malady of length of proceedings. This disease is subject to constant therapy, but it is still not cured.

[3] Lech Garlicki, Mark Brzeziński, *Polish Constitutional Law*, [in] Stanisław Frankowski, Paul B. Stephan III (eds.), *Legal Reform in Post-Communist Europe. The View from Within*, Martinus Nijhoff Publishers, Dordrecht-Boston-London, 1995, p. 21-50, on p. 44

Constitutional transition – road towards judicial independence

Constitutional changes

Constitutional changes securing the independence of judges and separateness of judiciary from other branches of government were introduced in amendments to the Constitution in 1989, and later on in the 1992 Small Constitution and finally in the Constitution of 1997.

The formal guarantees of judicial independence are included in:

- Article 10 of the Polish Constitution[4] – separation of powers principle;
- Article 173 of the Constitution, which provides that courts and tribunals shall constitute a separate power and shall be independent of other branches of power;
- Article 178 Section 1 of the Constitution – the principle of independence of individual judges stating that *"judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes."*

One of the most important reforms agreed at the Round Table talks was the establishment of the National Council of Judiciary. The NCJ was created by amendment of the Constitution in April 1989 and its role was to recommend on the appointment of judges to the President. The NCJ is an organ with participation of judges (of different jurisdictional levels), but also of other political bodies (Sejm, Senate or President). Therefore it is a collegial organ dominated by judges, but composed also of representatives of the legislative and executive powers. Currently, the NCJ has a crucial impact on the independence of judiciary.

Strengthening judicial independence through different reforms

In addition to formal constitutional guarantees of judicial independence there were different reforms with the aim of securing material guarantees of independence. They concerned such issues as:

- an independent budget for the judiciary and procedures limiting the impact of executive power on the amount of financial resources devoted to courts,
- increasing the competences of the National Council of Judiciary,

[4] The Constitution of the Republic of Poland as adopted by the National Assembly on 2nd April 1997, available at: http://www.trybunal.gov.pl/eng/index.htm

- diminishing the level of supervision by the Minister of Justice over courts and limiting this to general administrative supervision,
- strengthening the organs of judicial self-representation,
- securing major influence on the process of appointments, removals and dismissals of judges to the organs of judicial representation,
- a regular increase of judicial remuneration and other material benefits for judges,
- securing the role of the Supreme Court as the highest judicial organ.[5]

The principle of judicial independence was also developed in the jurisprudence of the Constitutional Court and in 1997 it was rectified by numerous provisions of the Constitution. Constitutional provisions, along with different statutes, provided for a relatively stable environment for development of judicial independence in daily practice. Over the last 20 years there were a few constitutional cases which touched upon certain issues concerning the judicial independence of the judiciary. The most important one was a case concerning the power to adjudicate judges by apprentice judges, which resulted in a serious reform of the judicial appointments' system (see below). Over all, those cases were rather of a fine tuning character than presenting some structural deficiency.

An analysis of a daily practice of the judiciary shows that it is highly independent. There are the following proofs for that – the number of cases in which courts declared innocence of accused persons. Both legislative and executive branches of government have been found at fault in many cases decided by the court (e.g. cases concerning responsibility of the State Treasury for damages).

Salaries of judges

One of the most important problems of the judiciary is the level of salaries of judges. For many years judges were underpaid, especially in comparison to other legal professions. The low level of remuneration caused frustration on the part of judges that the constitutional principle of satisfactory remuneration is not fulfilled with respect to them. In recent years this problem has led towards massive protests of judges. As a result, the government decided to spend more on judiciary and to increase salaries. Still, however, the problem has not been resolved completely and still creates a tension between judiciary and the executive power.

[5] In 1989 the Supreme Court lost the competence to issue the so-called guidance as regards the interpretation of law (*wytyczne*). At the same time the principle of lifetime appointment for judges of the Supreme Court was created (and not for 5 years' term).

The protests by judges took mostly the form of so called "days without hearing cases" (*dni bez wokandy*), which meant that during certain days judges refrained from participation in hearings, but only worked in their offices. Such form of protests, as well as a threat to block elections to the European Parliament (participation of judges in electoral committees is required by virtue of law) caused debate as regards the limits of judicial protests and judicial integrity. It seems also that the aggressive form of protests violated the general image of judges in Poland and also indirectly led to the crisis in the leading non-governmental organization representing judges – Association of Polish Judges "Iustitia".

System of judicial appointments

One of the fields of conflict is the system of judicial appointments. The need to reform this system was a consequence of repealing the institution of apprentice judges (*asesor sądowy*) by the Constitutional Tribunal.[6]

The Constitutional Tribunal declared that the status of apprentice judge differs from the status of a judge since it does not guarantee its entire independence from the executive branch of government. As a result of this judgment the whole system of judicial appointments was rebuilt and the new National School for Judiciary and Prosecutor's Authority was established. It is expected that new judges will be either graduates of this school or representatives of other legal professions, crowning their legal career with the position of a judge.

In connection with this there are discussions on how to reform the system in order to allow members of other legal professions (such as attorneys or notaries) to effectively participate in open competitions for judicial positions. The current practice is that usually in such competitions persons affiliated with the judiciary have a bigger chance to win. The NCJ is also in conflict with the President regarding his power to appoint judges upon the recommendation of the NCJ. Until very recently, the President of Poland in 100% of cases followed the NCJ recommendations and appointed judges. However, in the case of 10 candidates in 2007 he refused to make an appointment, without giving any justification of his decision. The still unanswered question is whether such a refusal constitutes a threat to the

[6] Judgment of 24 October 2007, No. SK 7/06. The English summary of the judgment is available at the website http://www.hfhrpol.waw.pl/precedens/images/stories/sk7_06_gb_final_2.pdf.

independence of judiciary. A case considering this issue is currently pending before the Constitutional Court.[7]

Changes in the system of judicial appointments and methods of judges' improvement are crucial for judicial independence, as they have impact on the internal intellectual independence of the judge. If internal intellectual independence is not sufficiently guaranteed, it may have a reflection in judgments issued by a particular judge[8].

Difficult years of 2005-2007 and their aftermath

The years 2005-2007 were especially painful for the judiciary in Poland, as they showed that this sector of government is still vulnerable to political threat.[9] The Law and Justice party claimed that courts should be blamed for the high level of criminality and general disorder in the country. In this populist fashion, the Minister of Justice, Mr. Zbigniew Ziobro proposed (and succeeded in getting these proposals passed in Parliament) different reforms curtailing the independence of the judiciary. The symbolic reform was the introduction of 24 hours courts which would decide on the stripping of judicial or prosecutorial immunity. Those reforms were stopped by the Constitutional Tribunal, but they pointed out that the parliamentary majority may have a significant impact on the level of judicial independence, especially if there is no sufficient constitutional control.

At the same time in 2005-2007 Poland witnessed an unprecedented number of verbal attacks by leading politicians on the judiciary. Courts, in general, proved to be independent and did not react to such attacks. Quite to the contrary, in politically sensitive cases they showed a high level of independence and often adjudicated with reference to the rule of law and quite contrary to the wishes of politicians. One cannot predict whether such approach would have persisted further if early parliamentary elections hadn't taken place in 2007. Furthermore, verbal attacks on the judiciary – combined

---

[7] See on this problem Stanisław Dąbrowski, The Boundaries of Permissible Interference in the Judicial Branch by the Executive and Legislative Branches, [in] Tomasz Wardyński, Magdalena Niziołek (eds.) *Independence of the Judiciary and Legal Profession as Foundations of the Rule of Law. Contemporary challenges*, Lexis-Nexis, Warsaw 2009, pp. 406-461, on 408-409.

[8] Katarzyna Gonera, *Judicial independence as the Foundation of the Rule of Law: The Judge's Internal (Intellectual) Independence*, [in] Tomasz Wardyński, Magdalena Niziołek (eds.) *Independence of the Judiciary and Legal Profession as Foundations of the Rule of Law. Contemporary challenges*, Lexis-Nexis, Warsaw 2009, pp. 383 – 398.

[9] See short overview Adam Bodnar, Michał Ziółkowski, *Justice System*, [in] Lena Kolarska-Bobińska, Jacek Kucharczyk, Jarosław Zbieranek (eds.) *Democracy in Poland 2005-2007*, Institute of Public Affairs, Warsaw 2007, pp. 49-58.

with the structural inefficiency of the justice system – undermined public trust in the judiciary. For this reason a lack of respect for courts presented by politicians may undermine their capacity and importance in a democratic society.

The elections in September 2007 had a significant impact on the position of the judiciary. Firstly, the general atmosphere around the judiciary stopped being so intense. The populist arguments and proposed laws were replaced by a real debate on significant topics related to the reform of judiciary, with the participation of all societal actors. Secondly, the government undertook a serious reform of dissolving the office of the Prosecutor General from the office of the Minister of Justice. Thirdly, the Minister of Justice, Zbigniew Ćwiąkalski, proposed certain reforms in the judiciary.[10]

A small number have been realized to date. The most significant (changes in the administration of courts) are still subject to discussion and it is not clear whether there is sufficient political will in 2010 to introduce them.

Future of the judiciary – supervision by the Ministry of Justice or the First President of the Supreme Court

The position of the NCJ vis-à-vis other state organs is one of the causes for serious discussions regarding the place for the judiciary in the legal system. While it is the task of the Minister of Justice to prepare and present different ideas for reforming the judiciary, the NCJ plays an important role in the process, by active consultation or defending judicial independence. One of recent conflicts concerns administrative supervision over common courts. In the opinion of the Ministry of Justice, it is up to the government to supervise the administration of the courts. The NCJ claims that such powers should be attributed to the First President of the Supreme Court, because the power of administrative supervision may be politically abused.

However, following the 2007 reforms of the judiciary as well as discussions on it are driven – to great extent – by the fear that populist thinking may at some point prevail and once again will attempt to place a bigger control over the judiciary. It is one of the major arguments raised by the National Council of Judiciary in its claim that the judiciary should be under the general supervision, including in administrative matters, of the Supreme Court and not of the Minister of Justice. In the opinion of the NCJ, even the current – relatively small supervisory powers of the MoJ – still give politicians an opportunity to have undue influence on the judiciary.

[10] Zbigniew Ćwiąkalski, Kierunki zmian w działalności sądownictwa [Directions of changes in the operation of judiciary], Państwo i Prawo [Law and State], No. 2/2009, pp. 21-27.

The current MoJ and the ruling coalition is of a different view and proposed reforms aimed towards securing only administrative supervision over courts (e.g. over court buildings, court personnel, budgetary issues, management, human resources, systems of court information, IT networks etc.).

It seems that as long as this conflict is unresolved we cannot claim that the judiciary has achieved stability in the system of government. It remains one of the problems to resolve. There are conflicting views on it and as long as one solution is not adopted, the system transformation with respect to judiciary will not be accomplished.

Judiciary and settlements with the past

In 1989 there was no attempt to make a general review of the judicial or prosecutors' personnel. The argument that it was necessary to maintain stability in the legal system prevailed. There was no immediate clearing of the judiciary from all persons who had collaborated with the secret services, who had been members of the communist party, or who had otherwise acted contrary to the values of democracy or of human rights. Instead, the idea was that the judiciary would clean itself up from such judges, or that new – generally applicable instruments – will be introduced allowing for the vetting of judges (or that such non-democratic judges would be ushered to early retirement). Such an approach was caused by the fact that a total replacement of all judicial personnel in 1989 in fact would be impossible and would cause paralysis of the judicial system. Instead the government decided on a smooth transformation. History shows that it was the correct move. The judicial system was able to operate and the basis function of the justice system – resolution of civil or criminal cases – was constantly achieved. It was possible to stabilize a legal system immediately after the start of transformation and to make a shift in generations of judges and in building the principle of independence on a long term basis.

The number of judges who had been members of communist party was high. Nevertheless, such membership did not mean necessarily a high politicization of judgments. Sometimes judges were obliged to be members of the communist party. It is stressed that the quality of judgments of the Supreme Court was very high in the 1980's and it allowed for a good legal transformation, because many legal principles and jurisprudence could be applied after 1989.

The symbolic change was the appointment in 1990 of the First President of the Supreme Court – prof. Adam Strzembosz, widely known for his independent thinking and integrity.

The vetting of judges and prosecutors was made in accordance with the Vetting Law of 1993, which obliged persons performing public functions to submit an affidavit stating whether they had or had not collaborated with security police in the communist era. For some judges or prosecutors this obligation to make a declaration forced them to resign from their official position and to seek employment in some other profession. Some judges were accused of submitting false statements regarding collaboration. The consequence of such a discovery was stripped of the position of a judge (or prosecutor) confirmed by the judgment of the vetting court. It is interesting to note that recently two judges, who were declared „vetting liars" won their cases before the European Court of Human Rights, claiming that they were deprived procedural fairness in proceedings before the vetting court. It means that such persons may now request the reopening of proceedings.[11]

Another aspect of the judiciary settlements with the past is the clarification of to what extent judges had collaborated with the previous system of government (e.g. whether they had issued judgments of political character). In fact, there was no such official review. From time to time it still causes certain controversies.[12]

An important factor influencing the settlement of the judges with the past were different scholarly publications illustrating the position of judges towards the previous regime. The most notable was a book by Adam Strzembosz and Maria Stanowska, which showed attitudes of judges in difficult communist times – whether they tried to remain independent or whether they breached standards and collaborated with the system.[13]

Finally, after 1989 the judiciary started to renew its personnel by the process of appointment of new, young judges. All those factors, lustration proceedings, internal pressure within the judiciary towards judges who had collaborated with the system, as well as new personnel in the judiciary, caused the effectiveness of the original plans of self-cleansing of the judiciary. The only problem was the length of this process. After 20 years of

[11] See Alicja RASMUSSEN v. Poland, Application No. 38886/05, judgment of 28 April 2009 (IV. Section), Elżbieta WRONA v. Poland, Application No. 23119/05, judgment of 5 January 2010 (IV. Section).

[12] An example is Judge Andrzej Kryże, who was involved in the penalization of Mr. Bronisław Komorowski for his participation in an illegal assembly in 80's. In the years 2005-2007 Mr. Andrzej Kryże served as the Deputy Minister of Justice.

[13] Adam Strzembosz, Maria Stanowska, Sędziowie warszawscy w czasie próby 1981-1989 [Warsaw judges at the moment of test of honour 1981-1989], Instytut Pamięci Narodowej [Institute of Public Remembrance], Warsaw 2005; Grzegorz Jakubowski, Sądownictwo powszechne w Polsce w latach 1944-1950 [Common judiciary in the years 1944-1950], Instytut Pamięci Narodowej [Institute of Public Remembrance], Warsaw 2002

transformation we can observe that the original intention has been realized, but there had been a hope that process would have been much quicker.

Structure of the judiciary – new problems in old shoes

The Polish Constitution provides for different types of courts: the Supreme Court, common courts, administrative courts and the military courts (Article 175). Their legal status and regulation differs with respect to organization, procedures and financing and is provided for in different legal acts. Nevertheless, judges in those courts have to adjudicate on the basis of the Constitution and legal acts and enjoy similar guarantees of independence.

Common courts

The organization of common courts is regulated by the Act on the Organization of Common Courts. Their basic role is to adjudicate civil and criminal cases of different types. Common courts in Poland are divided into a three-tier structure (district courts, regional courts and appeal courts). However, by virtue of the Constitution the procedure requires adjudication by courts of two instances (e.g. a case which starts in the regional court may be appealed to the court of appeals). In certain type of cases there is the possibility of submitting an extraordinary appeal to the Supreme Court.

There are many issues which cause constant tensions as regards in organization and administration of common courts. It seems that despite 20 years of transformation those tensions are still not completely resolved and stabilized. For example, there is a discussion whether the Ministry of Justice should favour small courts (located in small towns, "closer" to citizens, with a limited number of judges) over bigger courts (with significant number of judges and support personnel). Another issue is an internal division of courts into departments (general civil or criminal departments vs. specialized departments, e.g. dealing with family law issues or labor issues). Finally, the administrative supervision of the Ministry of Justice over the judiciary is not finished, especially with respect to the appointment of presidents of courts (and decision-making power of the judges' self-governmental bodies) and the position of court managers vis-a-vis the president of the court.

The limited scope of this paper does not allow for detailed analysis of the above issues. It should be underlined, however, that the problem of organization of common courts has stabilized in Poland. Despite 20 years of transformation, there is still no clear vision and agreement between

various stakeholders on what should be the ultimate structure of the Polish judiciary.

Another unresolved problem in the common courts is the public participation in the exercise of justice. It is realized through participation of lay judges in the adjudication of certain cases. The involvement of lay judges dates back to communist times, when social representatives' participation in the administration of justice was regarded as one of the most important features of the socialist system of law. Following the democratic transition, lay judges still participate in the administration of justice. Their status was even reflected in the Constitution (Article 182). However, the practice is to further restrict the categories of cases (and judicial panels) in which the participation of lay persons is mandatory. Secondly, in many cases lay judges do not effectively participate in the adjudication and mostly rely on the opinions of professional judges on the panel. There is, however, no possibility of excluding participation of lay judges from the judiciary totally as it would be a breach of the Constitution. From a theoretical perspective, the institution of lay judges is not necessarily contrary to the effective administration of justice. Rather, there is no deep thinking as regards their role in the judiciary, methods of selection of citizens for lay judges, their education and their role in the adjudication process. Changes in this area may allow for a better use of this institution in the democratic system.[14]

Administrative courts

The Supreme Administrative Court was established in Poland in [1980], well before the democratic transition. Its major role was to control the legality of administrative decisions. Although its powers were limited, it was the first time in Poland when the constitutional provisions were enforced by judicial body, which transformed the nature of the Poland's constitution into a legal and binding document.[15]

After 1989 the Supreme Administrative Court became one of the important courts due to the importance of the rule of law principle in the new system of government. The Constitution of 1997 stipulated that administrative courts should be two-instance courts. It resulted in

[14] Adriana Sylwia Bartnik, Sędzia czy kibic? Rola ławnika w wymiarze sprawiedliwości III RP [Judge or Spectator? The role of lay judge in the justice system of the Third Republic of Poland], Wydawnictwo TRIO, Warszawa 2009

[15] Lech Garlicki, Constitutional and Administrative Courts as Custodians of the State Constitutions – The Experience of East European Countries, Tulane Law Review, vol. 61 (1987), p. 1285, at 1297-98.

the establishment of regional administrative courts with the Supreme Administrative Court becoming the court of second-instance.[16]

In general, administrative courts are appreciated for their work and their internal organization or effectiveness is not assessed as negatively as in the case of common courts. However, there are certain drawbacks which need to be underlined.

It seems that administrative courts in Poland too often decide to declare administrative decisions due to formal reasons, while not assessing the merits of the application. Furthermore, administrative courts very rarely make independent assessment of evidence or request new evidence to be submitted to the court. In consequence, although formally administrative courts act in compliance with law, for the timescale for the final resolution of a case may be significantly prolonged. Therefore, it is proposed in the legal doctrine that administrative court proceedings should comply with values enshrined in Article 6 of the ECHR, i.e. they should look towards effectiveness of adjudication by using techniques allowing for a complex review of administrative cases.[17]

Military courts

Military courts are organized on the basis of the Act on the Organization of Military Courts of 1997. There are two types of military courts: provincial courts and garrison courts. The administrative supervision over military courts is performed by the Minister of Justice and the Minister of National Defense. Judges in the military courts are at the same time military officers.

Over recent years the number of cases adjudicated by the military courts has been constantly falling. Due to the low number of cases, some of the military judges are delegated to adjudicate in common courts. Furthermore over recent years, the competencies of military courts were limited to include only those strictly related to military service. Due to all these conditions, and taking into account the principle of effectiveness of the justice system, there are discussions about the liquidation of courts. It seems, however, that without a change in the Constitution, the liquidation of military courts is not possible. One of the arguments in favor of keeping military courts is the active participation of the Polish military in foreign missions.

[16] Jerzy Świątkiewicz, W sprawie modelu polskiego sądownictwa administracyjnego, [w:] Państwo prawa. Administracja. Sądownictwo. Książka pamiątkowa dedykowana Januszowi Łętowskiemu, Wydawnictwo Naukowe Scholar, Warszawa 1999, str. 298-306.

[17] Zbigniew Kmieciak, Koncepcja zintegrowanego systemu odwoławczego w sprawach administracyjnych, Państwo i Prawo [Law and State], No. 1/2010, pp. 25–38.

Length of proceedings as a systemic problem of the Polish judiciary

Following 20 years of transformation, the Polish judiciary is still facing certain unresolved problems. The most important one is the length of proceedings, especially in civil and criminal matters. The origin of the problem of the length of proceedings dates back to 1989 when the economic transformation started and Polish courts were not prepared, from a procedural and organizational point of view, to deal with the growing number of cases. Over last 20 years, the number of cases and matters delegated for courts' adjudication still continues to grow. At the same time, the administration of justice is still conducted in traditional manner, on the basis of patterns created in the Polish People's Republic.

Although many attempts have been undertaken in order to resolve the problem of length of proceedings, the problem still exists. One may observe, certainly, a gradual positive change, especially in smaller court regions, where the number of cases is smaller than in big cities. Nevertheless, this change is too slow and therefore, the judiciary, as a whole remains in crisis.

There is no single cause behind the problem of length of proceedings. Rather it is a multitude of factors, of different importance and impact depending on the particular proceedings. Therefore, the problem will not be resolved by one action (or legislative reform) but insteads needs addressing by a series of actions at different levels of state's activity as well as requiring complex legislative and organizational changes.

Even if certain procedures seem to provide a remedy in the case of violations of fundamental rights (or certain interests) protracted proceedings may *de facto* deny justice to a single individual. The length of proceedings causes a certain level of distrust in the Polish justice system. The length of proceedings is a problem at all stages of a case – waiting for review of the case by the court, review of the case by courts of different instances and the enforcement of the judgment by the court.

One may indicate the following major reasons for the length of proceedings in Poland.

- organizational constraints on the judiciary, in terms of management of work, lack of sufficient number of assistants or secretaries,
- changes in legal procedures which may result in a change of the court competent to resolve a specific case (and sometimes the necessity to start the case once again)
- negligence on the part of attorneys, who abuse procedure in order to prolong the proceedings for the benefit of their client,

- negligence on the part of the prosecutors' authority in terms of quality of work, compliance with deadlines, weak preparation of the bill of accusation,
- incorrect functioning of the system of delivery of court letters,
- a lack of a sufficient number of expert witnesses ready to prepare opinions for the court (or insufficient salaries for such witnesses)
- complex and strict legal procedures which require comprehensive examination of the case by the court and increase the possibility of procedural errors (which may result with remanding the case for re-trial)
- the insufficient use of the new technologies in courts and prosecutors (especially in communication with parties to proceedings or witnesses, the lack of complex electronic archives etc.)
- archaic system of preparing minutes from a hearing (lack of video and audio recording).

Another serious problem is a high formality of procedures before courts. Formality by some scholars was regarded as one of the instruments towards speeding up proceedings. However, the effect has been counterproductive. Although some of the cases were decided more quickly, the adjudication was deprived of its essence – seeking for justice by careful examination of the case. Different measures, introducing formal procedural rules coupled with inappropriate court practices, caused different problems with respect to access to court. Some of such measures (e.g. court fees, access to legal aid, procedures in economic cases) were later on appealed to the ECHR or to the Constitutional Court. In effect, the current trend is to relax such formal rules as well as to eliminate different special procedures.

Almost every government and Minister of Justice has undertaken different actions in order to diminish the problem of the length of proceedings. In consequence, in some fields Polish courts are working properly. For example, the court registers are using quite advanced IT technology. On 1 January 2010 the first e-court started to operate and its role is to adjudicate small claims which are not disputable between parties (especially claims by corporations against its customers).

The reform of the judiciary, in order to speed up proceedings, is driven to a great extent by the European Court of Human Rights. The first case decided against Poland in December 1997 concerned the length of proceedings.[18]

[18] Bronisława PROSZAK v. Poland, application No. 2/1997/786/987, judgment of 16 December 1997.

Since then Poland became infamous as regards the number of similar cases decided by the ECHR. In October 2000 in *Kudła v. Poland*[19] case the ECHR declared that undue length of proceedings violates not only Article 6 of the Convention, but also Article 13 of the Convention. This judgment compelled Polish authorities to start working on domestic remedies counteracting the undue length of proceedings. As a result, the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time[20] was passed. It laid down various legal means designed to counteract and/or to redress the undue length of judicial proceedings. A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length.

The Law of 17 June 2004 and its application following its entry into force was not a perfect remedy for the length of proceedings. Nevertheless in many cases it brought relief to victims and had a disciplinary effect on judges. In some cases, despite the clear violation of "reasonable time" standard Polish courts refused to adjudicate damages. Such cases were later directed to the ECHR which found a violation of Article 6 of the Convention. However, under current jurisprudence the submission of the case to the domestic court is required before a victim submits an application to the ECHR. On 1 May 2009 the said law was amended[21] in order to create a possibility to complain on length of pre-trial proceedings (under the old law only court proceedings were subject to possible complaint). This time the law will have a disciplinary effect on prosecutors.

The length of proceedings has a negative impact on the economy of Poland[22], but it also causes violations of other fundamental rights, such as the right to personal freedom or the right of respect for family life. For example, one of the major reasons behind abuse of the pre-trial detention is undue length of criminal proceedings pending against person with charges, who waits in detention for the submission of the bill of accusation and then for the end of the trial. The ECHR in the case of *Kauczor v. Poland*[23] confirmed that

[19] Andrzej KUDŁA v. Poland, application No. 30210/96, judgment of 26 October 2000.

[20] Ustawa z dnia 17 czerwca 2004 r. o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki, Dziennik Ustaw [Journal of Laws], No. 179, item 1843.

[21] Ustawa z dnia 20 lutego 2009 r. o zmianie ustawy o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki, Dziennik Ustaw [Journal of Laws] No. 61, item 498.

[22] See Report of the World Bank prepared in cooperation with the National Bank of Poland: „ Polska: Prawne bariery dochodzenia praw z umów", Warsaw 2006, available at http://www.nbp.pl/publikacje/raportymif/bsnbp.pdf.

[23] Adam KAUCZOR v. Poland, application No. 45219/06, judgment of 3 February 2009 (IV. Section).

Poland has a structural problem with the use of pre-trial detention. Another example are the refusals to exercise custody rights by parents with respect to their children, especially after separation or divorce. The non-compliance with the law or with court verdicts by one of parents (usually the mother) may go without serious consequences just because court proceedings are long and non-effective.

Management, human resources and IT

One of the major imperatives for the Polish judiciary are comprehensive management, human resources and IT reforms. The effectiveness of the courts' operations depends to a great extent on the adoption of different solutions, which are widely used in many countries, but not necessarily yet introduced in Poland. One of the reasons for this situation is the persistent lack of a general strategy or vision as regards the development of the judiciary. In the last 20 years Poland has had more than 20 Ministers of Justice. Some of them concentrated only on the most expedient reforms, some used the office of the Minister of Justice solely for political purposes (e.g. by promoting a harsh criminal policy), some others did not have sufficient time in the office to implement their plans. Therefore, reforms that were implemented were quite often fragmented, dependent on current financing (especially out of EU funds) and they were not part of a large, comprehensive, long-term strategy for the judiciary.

As late as 2009 the Ministry of Justice started to think about judiciary in terms of service-providers (delivery of justice, resolution of private cases) and started to use the economic analysis of law in order to evaluate the distribution of resources, money and demand for judicial services. The reform proposed by the Ministry of Justice in the mid 2009 is currently stuck in the process of consultation with social partners. However, their intellectual underpinning shows the necessity to think about judiciary not only in terms of constitutional arguments, but also to concentrate on economic considerations.

The Polish judiciary needs serious reforms in terms of the proper allocation of resources, internal management of courts, human resources management, communication with citizens, implementation of new technologies into the judiciary. Those reforms need money, but they also need vision and strategy and the persistence to realize these. The question is whether the Minister of Justice has enough political power and the authority among judges in order to implement them. Taking account of recent changes in the Association of Polish Judges "Iustitia" and the populist slogans raised

by some of its members, it seems that the Ministry of Justice will have a difficult task in implementing reforms.

Membership in the EU and the Polish judiciary

The accession of Poland to the European Union is in fact a new chapter for the Polish judiciary, as they became in fact the community courts, i.e. courts allowed to apply and to interpret the EU law. In the accession period a great effort has been made to teach Polish judges how to interpret the EU law and how to operate in the multi-dimensional legal system (Polish and EU). Following 5 years of Poland's membership in the EU Polish courts, especially administrative courts, one may say that Polish courts became *de facto* community courts as they are quite active in direct application of the EU law and in directing preliminary reference questions to the European Court of Justice.[24]

Nevertheless, Polish courts cannot still fully enjoy the possibility of cooperating with the ECJ, as they do not have the competence to direct preliminary reference questions in matters relating to former so-called Third Pillar (justice and criminal matters).[25] They also have a limited possibility to refer to the EU Charter of Fundamental Rights, due to joining by Poland the so-called Polish-British Protocol.[26] Furthermore, courts on a daily basis will face problems concerning the judicial cooperation in civil and criminal matters, that requires additional skills, understanding of problems and effective administration of justice.[27]

Prosecutor General

One of the issues of concern for last 20 years of the Polish transformation was the position of the prosecutor's authority within the system of organs of power. In fact the office of the Prosecutor General was connected with the office

[24] See review of most important cases involving interpretation of EC law or preliminary reference questions asked by Polish courts, Mirosław Kapko, Zapewnienie skuteczności prawa Unii Europejskiej w polskim systemie prawnym, [in] Jan Barcz (ed.) Pięć lat członkostwa Polski w Unii Europejskiej. Zagadnienia polityczno-ustrojowe, p. 104 – 145, pp. 131 – 137. See also Andrzej Wróbel (ed.) Stosowanie prawa Unii Europejskiej przez sądy, Zakamycze, Kraków 2005.

[25] See intervention of the Helsinki Foundation for Human Rights of 13 November 2009 to the President of Poland asking for submission of a declaration allowing for court jurisdiction in those matters. Available at http://www.hfhrpol.waw.pl/Noswiadczenie-155.html.

[26] Protocol No. 30 to the Lisbon Treaty. See Mirosław Wyrzykowski, [in] Jan Barcz (ed.) Ochrona praw podstawowych w Unii Europejskiej, Wydawnictwo C.H. Beck 2008, p. 25 – 37.

[27] See Władysław Czapliński, Andrzej Wróbel (eds.) Współpraca sądowa w sprawach cywilnych i karnych, Wydawnictwo C.H.Beck, Warsaw 2007.

of the Minister of Justice. In consequence, the executive power had the potential (and it made use of it) to influence the activities of the prosecutors. Different governments proposed to make a reform of separation of the executive power from the prosecutor's authority but effectively no reform has been made.

During the years 2005-2007 several examples of political abuse of the prosecutor's authority indicated that this institution needs serious and comprehensive reform. On 27 August 2009 the Polish Parliament adopted the law separating the office of the Minister of Justice from the office of the General Prosecutor . The law will enter into force on 31 March 2010. The amendment was vetoed by the President but the Sejm overturned the veto with the required 2/3 majority. The President objected to the law because, in his opinion, it removes government control over criminal policy. Under the new law, the General Prosecutor will be appointed by the President out of two candidates indicated by the NCJ and the newly created organ – the National Council of Prosecutors. The first General Prosecutor – due to as yet non-existence of the National Council of Prosecutors before the entry into force of the law – will be appointed out of two candidates presented by the NCJ. Potential candidates have to meet high professional requirements. They can be active prosecutors or active criminal judges with at least 10 years of experience. The General Prosecutor will be appointed for a 6 years term and cannot be re-elected. The new law guarantees a high level of independence for the General Prosecutor. However, there is a possibility of dismissing him before the end of term, but it requires the completion of a difficult procedure and a majority of 2/3 in the Sejm.(Polish Parliament)

In January 2010 a public hearing of 16 candidates for the position of the General Prosecutor took place.[28] This hearing underlined that, in fact, the separation of the General Prosecutor's Office from the control of the Minister of Justice is not enough. Practically all candidates, both judges and prosecutors, claimed that the prosecutor's authority needs substantial and comprehensive reforms, including relevant provisions in the Constitution[29].

This fact was well-known to the general public, but it seems that for the first time it was so widely acknowledged by persons having an in-depth, inside information, ie. prosecutors being candidates for the General

[28] Helsinki Foundation for Human Rights and the Forum of Civic Development actively monitored the process of selection of candidates for the position of the General Prosecutor and their professional profiles. Results of monitoring are available at www.hfhr.org.pl/prokurator.

[29] Currently there is no provision for the prosecutor's authority in the Constitution. It was a consequence of the approach under which the prosecutor's authority is subordinated to the Government. Following dissolution of the office of the Prosecutor General from the office of the Minister of Justice, there is a need for a constitutional underpinning for the prosecutor's authority.

Prosecutor. Accordingly, the first General Prosecutor will have a historic role to play in undertaking the difficult process of reforms.[30]

Summary

There are sufficient formal guarantees of independence of the judiciary in Poland. However, there are certain shortcomings with respect to these material guarantees. It is quite paradoxical that Polish regulations concerning formal guarantees such as the right to court (and the right to review a case by the court of second instance) establish higher standards than are required under Article 6 of the European Convention on Human Rights. However, Polish regulations and domestic practices concerning the judiciary and judges (including prestige of courts and position of judges), differ significantly from countries with well-established legal traditions.[31]

The most important problem of the Polish judiciary is how to comprehensively and structurally reform the functioning of courts in order to eliminate structural deficiencies, the poor allocation of resources, and maladministration, which results in the undue length of proceedings. Despite many attempts by different governments, the reform of the judiciary is still not regarded as a priority. Most of the reforms are superficial, they concern selected issues of the justice system, but do not address the situation of the judiciary as a whole. Even if certain reforms are made, their realization is not properly supervised and monitored, leading to a risk in failure of the whole initiative (e.g. National School of Judiciary and Prosecutor's Authority).

The problem of the length of proceedings, present at all stages (preparatory proceedings, court proceedings and enforcement) has a dramatic impact on the quality of law and judiciary itself. It results in a lack of public trust in the courts, a dissatisfaction with outcomes, as well as the frustration of citizens and judges. Similar problems, if not more significant, exist in the prosecutor's authority.

The question is what would be the future of the Polish judiciary if things remain as they are. According to an optimistic scenario, nothing special will happen because the judiciary in fact does not need any serious reforms,

[30] The National Council of Judiciary decided to select two candidates for the position of the General Prosecutor – Mr. Andrzej Seremet, judge of the Appeals Court in Kraków, and Mr. Edward Zalewski, current National Prosecutor (Prokurator Krajowy). The President has to select one of them as the General Prosecutor before the entry into force of the new law, i.e. 31 March 2010.

[31] Adam Zieliński, Wokół reformy polskiego sądownictwa [Comments on reform of the Polish judiciary], Państwo i Prawo [Law and State], No. 2/2009, pp. 3-20, on p. 20.

but only small evolutionary changes, which, over the years, will change the overall picture. Therefore, we have to wait for steady development of standards, resulting from certain small-scale initiatives by the government. According to the pessimistic scenario, the lack of reforms in the judiciary may lead towards "italianization" of the Polish justice system: even longer court proceedings, judges resigning from judicial careers and moving towards politics, alliances between judges and political parties, a lack of independence in the resolution of cases involving politicians and a growing level of distrust in the judiciary.

The conclusion is that any government should not allow for the emergence of any of those scenarios. The first one is, in fact, quite unrealistic. Changes implemented over the last 20 years has certainly improved the quality of justice, but it is still far from expectations (or international standards). The second scenario would mean the destruction of everything positive which has been built over the last 20 years, especially ethos and the position of a judge. Therefore, there is a great responsibility and obligation to effectively modernize the judiciary and, at the same time, to ensure standards of judicial independence and judicial professionalism. This responsibilty rests equally on judges, on organs of judicial self-government or representation, on government and on non-governmental organizations.

Krzysztof Burnetko

20 years of public administration in independent Poland

All Polish governments since 1989 have declared their will to fight bureaucracy and to make public administration truly professional. However, these assurances often did not hold up in when confronted by old habits and current political interests.

As many as seven years had to pass before the first comprehensive law on civil service operations were adopted. Since then, legislation has been frequently and hastily changed. It is not surprising that the Constitutional Tribunal looked into the legal validity of these new acts. It is characteristic, that subsequent governments felt less and less ashamed when they accounted for breaching those principles that are seen as mandatory in the public administration of any modern European state. Worse still is the fact that as a result of such an approach by politicians, public administration in Poland has not been prepared to face the challenges of the modern world: Polish citizens, also still perceive the sphere of public administration as the battlefield of party groupings.

Milestones in the building of the public administration system after 1989

Phase I: To create elite of administrative officials

The scale of the Polish breakthrough after June 1989 – a bloodless yet a revolutionary change of the political system – at first forced the new authorities to fill top management positions with people from the former anti-communist opposition of the 1970s and 1980s. These appointments lacked any administrative experience, but they were also free from the habits

typical of officials who had worked in the administration of the centralised socialist state in which the government was only a façade; the real decisions were made by the communist party and the principles of nomenclature were decisive in appointment to important positions.

In June 1991, the Parliament passed the Act on the National School of Public Administration [NSPA]. The role of the school was to "prepare high administration officials for public service". The idea of such a school had already appeared in the cabinet of the first Prime Minister of independent Poland, Tadeusz Mazowiecki. It was modelled on the Ecole Nationale d'Administration – as in France before the war, the important point was to quickly form a corps of government officials for the already independent, and in the dreams of many – also modern, state.

The term "civil service" meaning state administration based on the Nolan's principles (selflessness, integrity, objectivity, accountability, honesty and openness) became a buzzword of the moment. The principles themselves were presented as the standard for a democratic state.

The NSPA graduates were praised for their professional background, knowledge of languages, initiative and unconventional way of thinking. Yet, even though subsequent prime ministers would visit NSPA and declare their appreciation of the importance of civil service, various governments were not always very willing to employ NSPA graduates.

At the same time, officials with an employment history pre-1989 did not attempt to hide their reluctance towards the new recruits. Apart from a fear of competition, another important factor was that NSPA graduates were immediately appointed to senior positions and did not attempt to hide their self-esteem and ignored the previously existing networks and habits. The "old guard" would say that the NSPA people were not so much prepared to the role of an administration official but rather to a role of a leader and that they were of no use in everyday ministerial work.

The NSPA recruits, in turn, complained that in Poland a career in public administration still depended on political fortunes. As a result, a significant number departed the public service for private companies, offering much better wages.

Phase II: To pass a law on civil administration

The first draft of a comprehensive law governing the status of public administration – in the form of an act on the state civil service – was submitted by the government of Prime Minister Hanna Suchocka, to parliament in August 1993. It was over 4 years after the breakthrough of 1989!

The act was to constitute a part of a fundamental reform of state administration: apart from the catalogue of new laws, amendments to further 150 existing acts were planned. The act proposed to increase the effectiveness by strengthening the position, on the one hand, of the prime minister, on the other hand – of local governments. It was clear that in spite of the political system changes, Poland still remained a bureaucratic country: the power was concentrated in the capital and in the ministries and the administration was expensive, inefficient and detached from its citizens.

In order to improve the functioning of the administration, it was proposed to form a group of career officials: professional, apolitical and working for the state, regardless of government changes. Among other institutions, a government secretariat was to be created to provide service to all subsequent cabinets. The victors in parliamentary elections would only appoint their people to the highest ministerial positions. All other officials would be employed on a permanent basis and would be loyal to any government that would be formed, thus ensuring the continuity of the functioning of the administration. They would also be guaranteed relatively high remuneration.

These proposals were destroyed by a period of political turbulence. – In spite of this setback all subsequent governments declared that they would transform the public administration following in this spirit. Commentators pointed out that a civil service had already existed in other post-communist countries – in Hungary (since 1993) or in Latvia (since 1994), and Poland still was not able to get one.

Eventually, in July 1995, the Civil Service Council was appointed and entrusted with the task of creating a corps of professional administration officials. In the Polish Parliament, the work on this civil service act only started at the end of January 1996. The discussions focused around various issues, including the one of which official positions should be political and which – administrative. Controversy was also raised by the proposal to link the rank of an official with his or her length of service. Political parties originating from the anti-communist opposition argued that such a solution would make it difficult for people who joined the administration after 1989 to make a career. Experts added that in the West, the idea of linking the rank with the length of service was being abandoned while it was more and more frequent that rank was linked to the quality of performance.

The Civil Service Act was eventually passed by the Sejm on 5th July 1996. Seven years of the Third Polish Republic had to pass for the idea of a civil service to become law.

Phase III: (At odds) with the Act

The Act provided that only some of the positions in public administration were to have a political character. All the remaining ones were to be neutral and typically professional career appointments.

It soon turned out, however, that the ruling coalition (consisting of the post-communist Alliance of the Democratic Left – SLD and the Polish People's Party – PSL), despite having voted for the depoliticization of the public administration system, were not subsequently intent in abandoning the practice of promoting their own people to public office.. The programme to reform ministries and central government agencies almost ended in a cabinet crisis. The compromise reached turned out to be a spoils system. The coalition was already thinking about the upcoming parliamentary elections: with posts to offer, it was much easier to motivate supporters.

The recruitment to the Civil Service Corps was carried out in record time: within 2 months, 300 people underwent the qualification procedure. The standard of the examinations was embarrassingly low. The candidates eagerly got rid of their SLD or PSL party membership cards, in order to comply with the requirement of no political party alignment. The requirement of long service favoured officials whose careers went back to communist times; quite a few of them presented certificates of completion of elementary Russian language courses as proof of their foreign language proficiency.

As a result, before the parliamentary elections (which, as it turned out, the ruling coalition lost), the post-communist government had been able to place over one hundred of their own people in some prestigious official positions.

The new government (formed by a centre-right coalition AWS [Solidarity Election Action]-UW [Freedom Union]) soon published a "Report on the formation of the civil service between August 1996 and September 1997". The report stated that their predecessors were partial in recruiting members to the civil service corps and that it was done following political and unprofessional criteria. According to the Report, "it constituted a deliberate abuse of law that is using the act on civil service for purposes contrary to its political goals".[1] This resulted in a number of official positions been taken by supporters of the post-communist coalition, with a communist nomenclature background: "Under the name of a civil service, a reproduction of the old bureaucracy has taken place".[2]

[1] See: Raport o służbie cywilnej [Report on Civil Service],"Rzeczpospolita", 5.03.1998

[2] ibid

Prime Minister Jerzy Buzek announced that the qualification procedure would be annulled and the recruitment would be carried out anew. Commentators cautioned that the verification process should be based on merit – in order to avoid accusations of political revenge. This fear was well founded as the AWS-UW government had also begun a dispute over appointments to ministerial and voivodship administrative positions, which was perceived by many voters as a struggle for power.

In June 1998, the government submitted a draft of a new law on the civil service – after less than three years of the operation of the previous one. It came into force in July 1999 – and immediately became an object of manipulation.

The new act also provided for the selection of candidates to the civil service to be solely merit based. It applied to officials ranging from the Prime Minister's Chancellery to regional audit chambers. The recruitment was to be "open, public and competitive". Managerial positions were to be filled by civil servants selected in a competitive process. However, for the first 5 years – until a sufficient number of candidates with the required status were available – also other people could apply for those posts.

That provision soon became a loophole leading to political clientelism. First, Jerzy Buzek's government allowed the appointment of candidates to high rank positions on the basis of an ordinary employment contract – thus disregarding the requirement of civil servant status and avoiding holding a competition. In the spring of 2001, directors general of the Office of the Committee for European Integration and the Committee for Scientific Research (both important institutions) were appointed via this loophole – people who practically decided about the human resources policy in the organizations they headed.

The protests of the Civil Service Council that such a mode of filling the posts was only allowed in exceptional situations proved in effective.

Subsequently, exactly the same interpretation of the law was applied by the next Prime Minister, Leszek Miller – this time coming from the left side of the political scene. What was more, in December 2001, Miller's cabinet forced through an amendment to the Act on Civil Service that made it possible for senior civil service positions (such as directors general) to be taken up by people from outside the civil service corps and without the obligation to undergo a competition procedure. This lowering of the standards was justified by vacancies and the lack of candidates that could meet the strict recruitment criteria.

Even though the time in which the provision was to be in force was limited to the end of 2002, in view of the opposition, it created a loophole to allow for the appointment to strategic positions in the administration

according to a political criterion. During the vote in the Parliament the charges of "a putsch" and "a coup d'état by a statute" were thrown.

On the motion of the Civil Rights Ombudsman, the case was sent to the Constitutional Tribunal. The Tribunal ruled that the provision introduced by the government violated the constitution; to ensure the proper conduct in fulfilling of state responsibilities, members of the civil service corps had to be professional, impartial and politically neutral – and therefore had to be selected by way of a competition.

During its year in force, the unconstitutional provision caused a great deal of damage: under that mode, 16 people were employed as "acting" directors general in ministries, central government offices and voivodship offices together with 70 department directors. Thus the key positions were filled by people who did not meet the professional criteria but were usually linked to the political milieu of the current minister or voivod.

Political neutrality of public administration in Poland became just a facade.

Phase IV: The "it's our turn now!" approach

But the worse was yet to come. In autumn 2005, a group of populist parties came to power, conservative-national in their ideology and representing etatism in their approach to economy. They fiercely criticised the whole post 1989 period practically and the majority of the institutional and political system solutions that had been implemented. The administration was accused of being one of the elements of the so called "network of interests" of the existing political and business elites.

The necessity to fight these pathologies and the slogan of "the moral revolution" justified, according to the new government, treating the power to rule the state according to the principle "the winner takes it all", disregarding the political customs and even the constitutional regulations.

One of the examples of such a treatment of the state, during the rule of the coalition formed by Prawo i Sprawiedliwość [Law and Justice – PiS], Samoobrona [Self-Defence] and Liga Polskich Rodzin [League of Polish Families – LPR], was their approach to public administration. Supporters of the so called Fourth Polish Republic practically rejected the concept of civil service. In the so called stabilization pact, concluded between the coalition parties, a provision was included calling for a new regulation of the civil service – including the personnel recruitment procedures. The way in which the new authorities perceived public administration could be inferred from some statements made by government representatives. The newly appointed Minister of Internal Affairs and Administration, as early as November 2005,

admitted that civil service "should be a group of competent but at the same time politically loyal officials". That was accompanied by questioning the integrity of the officials who worked for the Third Polish Republic – and especially by accusing some of them of a communist provenance and connections with post-communists (even though only the NSPA itself had produced almost 800 graduates since 1990).

The government started to promote legal changes that would lead to fulfilling their vision of public administration. In August 2006, the Parliament adopted an Act on Civil Service and an Act on the State Personnel Pool [PZK]. They abolished the procedure of competitions for senior government administration positions. Candidates for over 2000 positions were to be drawn from the PZK, from which ministers, ministries' directors general and heads of state offices would pick the officials they liked (they would also be free to dismiss them).

The new regulations did not include the requirement of political neutrality of people entering the PZK. One could get into the Personnel Pool not only after passing the examination – it was sufficient to have served for an appropriately long time or hold a PhD degree.

The coalition abolished the position of the Head of the Civil Service. His responsibilities were taken over by the Prime Minister's Chancellery, which thus gained direct supervision of the 120-thousand civil service corps.

Another amendment of May 2007 increased the pool of people eligible for PZK even further and extended the list of institutions where it was not necessary to hold a competition in order to appoint their heads.

As a result, the civil service rules in practice applied only to medium rank positions.

It was thus not surprising that the opposition filed a motion to the Constitutional Tribunal, questioning the compliance of some of the provisions with the constitution.

The government, however, did not wait for the Tribunal's ruling. Using the new regulations, they made a series of staff changes in government agencies at different levels and in state owned companies. The vast scale of the changes justified describing them as "purges". In the meantime, as a result of such hasty appointments, the coalition's loyal people were introduced into the PZK ranks.

This approach resulted in the deterioration of the quality of the public administration's work; when it is not one's skills but one's political connections and views that decide about one's career, the level of servility increases. In decision making officials are motivated not by the law and the common good but by the expectations of their current superiors. Or to the

contrary, they withhold decisions waiting for guidance or a change of the political climate.

Eventually, also the prestige of public administration suffered, as it started, again, to be perceived as the place of party intrigues. It was not surprising that public interest in a career as a public servant diminished and the trend of leaving the civil service for business increased. A threat also appeared that civil service corps would soon stop functioning altogether.

Phase V: A new opening

At last, voters themselves said, "no" to a government that had believed they could undermine the rules acknowledged in all modern democracies for the sake of their own vision of the state. That is why the elections of autumn 2007 are treated as one of the most important electoral events in the history of independent Poland. This is evidenced by the highest voter turnout since the historic vote in June 1989.

And yet, the new Prime Minister, Donald Tusk, in his inauguration speech, did not say a word about civil service. And the unfortunate act passed by his predecessors had to wait one year for an amendment: the coalition of the liberal-conservative Platforma Obywatelska [Civic Platform – PO] and the people's party PSL forced its public administration reform through the Parliament in October 2008.

A symbolic change concerned the role of the Prime Minister – he became the constitutional head of the civil service. However, he can only appoint and dismiss the proper Head of Service. The new act reinstated that position with the responsibility to ensure that constitutional rules of the civil service are observed. The Head of the Civil Service must be apolitical: he should implement the government policy but "within the framework set by the provisions of law".

Another symbol of the start of a new era was the abolition of the State Personnel Pool.

The third– candidates for directors including the position of director general and other senior positions in ministries and government offices in the civil service, are to be selected in an open and competitive recruitment process following the provisions of the 1998 Act. Other senior positions may also be filled by way of the so called, internal promotion, which is expected to facilitate making a successful career in civil service.

A sign of a modern approach to human resources management is the introduction of regular job appraisals and individual career development plans.

The two years of the current government (liberal-conservative Platforma Obywatelska and a people's party PSL) rule show that:

- contrary to the allegations of the former government but also contrary to the predictions of certain commentators, the senior management in public administration has not been changed to the extent that would justify talking about purges or political revenge (especially if one remembers the staffing policy of the previous government and the level represented by some of the officials favoured by them)
- the current coalition seems to be much more interested in changing the composition of management bodies of companies with state ownership and various government agencies and not so much in reforming the civil service;
- unfortunately, there are still attempts, sometimes successful, to continue the staffing policy based on cronyism; it is characteristic that if PSL practices nepotism, as before, without any scruples, PO activists use more sophisticated tactics (the most representative positions, which are constantly monitored by the media, are normally filled following the principle of competitiveness; they feel no restraint, however, in case of lower profile posts)

The old threats…

The very turbulent history of public administration in Poland after 1989 shows that the biggest threat to this sphere of public life are the unfettered ambitions of politicians who try to appropriate it for their own party interests. The evidence of this are both disputes around subsequent regulations concerning civil service (and especially the fact that it took 7 years for the first act to be adopted), as well as the practice of implementing those regulations. The adopted provisions were systematically violated, treated as a tool for promoting some vested interests or goals, or interpreted in contradiction to their spirit while all signs signalling such irregularities were ignored. And the worst is that the above questionable standards apply to governments representing almost all sides of the Polish political spectrum. This is not the case in some other post-communist countries – for instance in the Czech Republic or Estonia the civil service has been functioning without any major disturbances. Poland, in addition, has a long tradition of civil service, comparable to other European countries – it began with the "Temporary Civil Service Rules" adopted immediately after regaining the independence in 1918.[3]

[3] Polish public service and the administrative framework – assessment 2002 Sigma Support for Improvement in Governance and Management in Central and Eastern European

It is also characteristic how the excuses of subsequent governments varied when they violated the civil service requirements. The centre-right cabinet of Jerzy Buzek, the first to be bound by the Civil Service Act of 1998, came up with some stratagems to circumvent its provisions in order to introduce its own loyal people by the back door. Though obviously no justification this government, at least, exhibited some shame in its behaviour. However, the following government exhibited no scruples at all. The post-communist government of Leszek Miller not only creatively built on the tricks applied by their predecessors, but also showed no restraint in using them. Any embarrassment was out of the question. In order to install their own people in key positions, this government did not hesitate to break the law – including the constitution. The conservative-national government of Jarosław Kaczyński, in turn, directly questioned the very idea of a non-partisan and professional public administration, both in their rhetoric and in practice.

Another tendency, of a systemic nature, is the practice of defining the status of certain state offices so that they were not obliged to apply the civil service rules. That is what happened, for instance, in the case of the Office for Registration of Medical Products, Medical Devices and Biocidal Products, which takes decisions involving enormous amounts of money and which can easily fall prey to corruption attempts. A similar trick was used with regard to another office of key importance: the Government Legislation Centre.

Finally, the third tendency: this is the tendency of disregarding the bodies responsible for the protection of the rank of the civil service. Both, the letters of reminder sent by the head of the Civil Service and the resolutions of the Civil Service Council were often put on the shelf. Here, the example came from the top: if prime ministers allowed their ministers to ignore the Head of the Civil Service and if the opinions of the Council, appointed by the prime minister, were not taken into consideration, it should not come as a surprise that those bodies were not respected by lower rank officials.[4]

There can be only one conclusion: the awareness of what a civil service is and what purpose it should serve, has never properly developed among the majority of those in power.

... and the new challenges

The provisions regulating the status of public administration currently in force seem to be a good starting point for reinstating the modern civil service

Countries, Warsaw 2002

[4] Krzysztof Burnetko, Służba cywilna – punkty krytyczne: raport opracowany dla Fundacji im. Stefana Batorego [Civil service – critical points: a report prepared for the Stefan Batory Foundation], Warsaw 2003

standards. The fact that they are ideologically close to the declarations of a part of the opposition may also play a role.

The critical points may turn out to be the scope of political neutrality of civil servants (including the extent to which the Head of Civil Service is subordinate to the Prime Minister) and the procedures for recruitment to senior positions (especially an option to abandon the competition procedure for the sake of the so called, internal promotion and the related threat of circumventing the principle of competitiveness).

An important introduction is to allow the application of modern management methods in public service administration. The key issue, however, remains how to respond to proposals to base the functioning of the public service in Poland on the managerial (task-based) model[5].

The restoration of the value of politically neutral (in the meaning of: party neutral) modern civil service to public awareness has become a great and eternal challenge.

[5] See. Anetta Jaxa Dębicka, Sprawne państwo, [Efficient state] Warsaw 2008 and the statement made by Prof. Grzegorz Rydlewski during a conference organised by IPA and NSPA „Nowoczesna, apolityczna służba cywilna w Polsce" [Modern apolitical civil service in Poland] 7 May 2007

Radosław Markowski

The Polish political party system and democracy

The role of political parties and the nature of today's party systems

For many people, political parties constitute one essential component of contemporary democracies; nowadays, there is simply no democracy without political parties, no true democracy, that is. On the other hand, a characteristic feature of these "quality" democracies is the existence of not just any political party system, but rather a consolidated or institutionalised one. The reason why this institutionalisation is so precious is that it guarantees the stability of the system as well as providing predictability in its functioning; these are very important features of political systems. Their importance grows even further when democracies are built on the basis of socially acceptable and formally legitimised standards and procedures of authority appointment. For the sake of clarity – it is about a level of stability that is, on the one hand, rather flexible about the stability of the rules of the game and the institutions, while on the other hand, reassuring in the event of uncertainty in the result of that game or an institutional arrangement of the authority. The institutions of elective democracy safeguard this uncertainty – they are challenged and their quality – questioned, when the group in power does not change for a long time, as, for example, in the case of the half-century domination of power by Liberal Democrats in Japan. Thus, democratic political party systems are expected to combine the consistency of the rules of the game with the uncertainty of the results of the game itself.

I have already written about the conceptualisation of the phenomenon of an institutionalised party system in other publications (Markowski 2006; 2007 and; 2007 b; 2008, also earlier Kitschelt, Mansfeldova, Markowski, Toka 1999). Let us, therefore, just summarise that it is a system in which

parties enter into long-lasting and predictable coalitions. These parties, enjoy the reliable support of certain social groups (they are socially "rooted"), while, at the same time, they remain autonomous and independent in their actions even from those organizations that had contributed to their formation (trade unions, churches). The mechanisms for their functioning, and the fate of these parties, are inseparably connected with this collective life and these institutions, whereas the criteria for leadership recruitment and formation are set in accordance with rational-bureaucratic procedures that are characteristic of organizational entities of a supra-individual nature (Mainwaring and Scully 1995).

Yet, Mair (2002: 99) offers a different approach to the issue of consolidation of party systems. He distinguishes two models of political party systems, (a) open and (b) closed. With regard to a competition structure: His model uses three simple indicators of the condition of a consolidated system; they include: /1/ alternation of government; /2/ governing formula; /3/ access to government. A consolidated (institutionalised) party system is, according to him, a system with a 'closed' competition structure, which means that the alternation of government is complete or none at all, the governing formula is "known" and access to government is "closed".

Finally, by a political party system we mean here – following G. Sartori (1976) – "a system of interactions resulting from inter-party competition (...). It bears on the relatedness of parties to each other, on how each party is a function (in the mathematical sense) of the other parties, and reacts competitively or otherwise, to the other parties."

Tools for describing the Polish political party system

We shall now discuss the detailed characteristics of the Polish party system; let us start with the structural features that will help to assess its institutionalisation. The most important features and at the same time the quantitative indicators of a party system institutionalisation include: (i) the number of parties, that is an indicator called "effective number of parties'; (ii) the fractionalisation of a party system; (iii) the measure of its proportionality; (iv) the percentage of the so called 'wasted votes' in elections; (v) the total amount of votes and seats won in a given election by the two biggest parties; (vi) the level of 'electoral volatility' – the level of instability of voters' electoral preferences, measured both aggregately and individually. The above indicators allow us to assess the stability of a system, its degree of representative-ness, the ability of political elite to reach consensus and their potential for forming coalition governments. I have already presented

the description of the above indicators in other Polish language publications (Markowski 2007a; 2007b; Cześnik, Markowski 2004).

At the same time, we need to bear in mind that the Polish way of thinking about the "positive" impact of consolidated party systems on the permanence and the quality of democracy originated from a simple observation of the Western European political reality bordering on Poland. Party systems of these western countries, at least up to the beginning of 1990s, and certainly, for almost the entire 20th century until 1970s, were very stable, with a low level of electoral volatility, predictable coalitions and relations between political parties and the surrounding social world that determined the place of a voter in the social structure. The last decade has suggested a fading of this state of affairs. More and more frequently, voters make their decisions, independent of their class status; several new political parties emerge, the dominance of certain political configurations fades into oblivion, and the electoral volatility increases significantly (Toka 2006). Generally speaking, and perhaps a little cuttingly, however, we can now say that the systems of both parts of Europe have started to show similarities. This is not only because Central and Eastern Europe follows the Western models, but also because in the countries of Western Europe, today, many features characteristic of the Eastern European party systems are becoming visible.

The important thing, is however, that the turbulence that political party systems of Western Europe is currently undergoing, does not indicate that anything wrong is happening with democracy, although it is criticised for a lot of other phenomena.

Changes in the Polish party system and their effect on the shape of the political scene

What does the Polish party system of the recent years look like against this backdrop? First, we should note that the Polish party system, from its democratic origins, has justified a question asked by Petera Maira (1997) a decade ago, can "the very notion of a newly emerging party *system* be a contradiction?" Poland has always been the best illustration of the problem of the very essence of "systemicity". Now, after the parliamentary elections of 2005 and 2007 it has become even more significant than ever before.

Let us start by remembering that it is not only the party system itself that has been rather unstable in Poland so far, but the institutional and formal procedures have also changed quite frequently, although it must be admitted that the changes have not been revolutionary. Nevertheless, in 1993, electoral thresholds were introduced, the manner of converting votes into seats has

changed repeatedly, as has the size of constituencies, and finally, the so called national list has been abolished.[1]

Most indicators concerning the party system are shown in Table 1.

Table 1. Main features (indicators) of the Polish party system 1991-2007.

Indicators:	Elections:					
	1991	1993	1997	2001	2005	2007
Fractionalisation index	0.93	0.90	0.78	0.78	0.83	0,70
Effective number of parties index (votes) – Laakso & Taageper	13.86	9.80	4.59	4.50	5.86	3.32
Effective number of parties index (seats) – Laakso & Taageper	10.45	3.88	2.95	3.60	4.63	2.82
Gallagher's disproportionality index	4.14%	15.74%	9.75%	4.42%	5.61%	4.39%
Percentage of wasted votes	8.37%	34.44%	12.41%	9.37%	10.93%	4.12%
Percentage of votes cast for the two biggest parties	24.31%	35.81%	60.96%	53.72%	51.13%	73.62%
Percentage of seats won by the two biggest parties	26.52%	65.87%	79.35%	61.09%	61.96%	81.52%
The size ratio of one party to the other (votes)	1.03	1.32	1.25	3.24	1.12	1.29
The size ratio of one party to the other (seats)	1.03	1.29	1.22	3.32	1.14	1.26

Aggregate electoral volatility index	1991-1993	1993-1997	1997-2001	2001-2005	2005-2007
Global	34.78%	19.19%	49.30%	38.39%	24,6%
Inter-block (Left-wing – Right-wing)	18.90%	7.58%	18.72%	26.16%	11.6%
Individual electoral volatility index					
Inter-party volatility		62.26%	55.94%	62.64%	34,48%
Inter-block (Left-wing - Right-wing)		15.47%	20.24%	27.69%	15,36%

Source: Author's own calculations based on: 1) Report of the National Election Commission (PKW) and 2) Polish General Election Study (PGSW).

And thus, the level of fractionalisation of the party system, referring to the process of political factions' formation, changed quickly, which is understandable, because the first democratic elections were held in 1991, under a completely proportional electoral law without any "thresholds". The threshold introduction in 1993 did not bring about an immediate change of

[1] The candidates on that list had an additional chance to win a seat at the Sejm even if they had lost the election in their constituency (*editor's remark*)

the fractionalisation index, because – as the collective wisdom of the political science tells us – changes to electoral law must be absorbed by the voters, and that takes time. The change could be visible in the following elections, in 1997, when the fractionalisation indicator dropped to 0.78 and remained at that level in 2001, to rise again in 2005, and eventually fall to the lowest level ever in 2007.

The indicators logically linked with the fractionalisation are: the effective number of parties index, index of disproportionality and the percentage of wasted votes. All of these have very specific values for the year 1993, when the most important amendment to the electoral law took place. At that time, in parliamentary elections, the Hare-Niemeyer method of converting votes into seats, a method that better reflected the electoral preferences and thus favoured smaller parties, was abandoned. It was replaced by the d'Hondt method, more favourable for big parties, especially with its introduction of a high election threshold. In the Polish parliamentary elections in 1993, a threshold was introduced of 5 % of votes for individual parties, and as much as 8 % for coalitions. Those changes resulted in an extremely high indicator of disproportionality between the final election results and the distribution of seats in the Sejm as well as an astronomical percentage of unproductive votes, rarely recorded in the world, exceeding 1/3 of all the votes cast (almost entirely cast for the right-wing parties). „The lesson had been learnt" and in 1997, we could already see that both the percentage of unproductive votes and the disproportionality of the system were radically reduced; by 2007 it had risen to a level very close to that noted in consolidated democracies.

At the same time, the total electoral support for the two largest parties increased significantly. The parties, Civic Platform and Law and Justice, emerged in 2001 from the ruins of the Solidarity Elections Action [AWS], a political group combining factions originating from a Solidarity trade union background. In recent years, these parties have increased their support to over half of all voters and about 3/5 seats in the parliament, to reach 4/5 in the parliamentary elections of 2007. That is the reason why we can now see a very distinct fall in the so-called effective number of parties, down to 2.82 in 2007. How should this be interpreted? In 2007, 4 parties got into the Sejm; if they all represented identical political power manifested by the number of seats won, the effective number of parties indicator would be 4. The fact that it only reached 2.82, shows a great disproportion of political power in the Polish parliament and a clear domination of Civic Platform and Law and Justice. At the same time, these two dominant parties do not differ very much in terms of their programmes, and that may be interpreted as a serious system defect when judged from the point of view of the quality

of democracy. Today, voters simply have a more limited choice, as the „supply" side of the party system is smaller. The system permits a small number of parties onto the parliamentary stage and the programme offer is thus narrowed. We should, however, acknowledge, that all indicators of the percentage of voters are calculated with reference to the active electorate, i.e. the citizens who participate in elections. Thus, the 60 or 70 % of votes won by the two biggest parties should in fact be reduced by half because in the elections of 1997, 2001 and 2005 less than half of the eligible Polish voters took part in them and, in 2007, the turnout was only a little higher. We will come back to this issue below.

Unpredictability and inconsistency of voter behaviour in Poland

In Table 1 I also present the aggregate electoral volatility indicators. This is a factor most often used for assessing the consolidation of party systems. It demonstrates the scale on which voters support for a party changes. It still differs – although it is changing in the right direction – from the data noted in post-war Western Europe, where during the thirty year period between 1960 and 1989 (excluding Greece, Portugal and Spain) it amounted to 8.4% (average of 131 parliamentary elections from that period). It is, however, interesting to compare it with the first three elections after democratic transformation in countries such as Greece, Portugal and Spain. In those countries, electoral volatility amounted, respectively, to 18.4%, 8.7%, 13.6%, to reach the long-term Western-European average in later years (Mair 1997: 182). As the data presented in the Table show, the Polish indicators differ categorically from those mentioned above[2]. The level of electoral volatility in Poland is comparable only to the notoriously unstable systems of Latin America (Bolivia, Peru, Ecuador, and Brazil) in the worst periods of their development[3]. We should remember, however, that in the first decade of the 21st century, the electoral volatility in Western Europe has also been double-digit, and some countries have demonstrated higher volatility than Poland (the Netherlands in 2004 – 34%).

It should be added that in order to assess the level of a party system institutionalisation, it is not so much the overall level of the aggregate volatility that is important but rather the (inter-) "block" volatility,

[2] They also differ much from the average for the other three Visehrad countries; in most of the first elections the average in those countries did not exceed 20 % or was close to this value.

[3] In those countries, in the 1960s and 1970s it reached between 40 and 50 %.

that is, the shifting of the electorate between different ideological options. To put it differently, one can allow a possibility that in new democracies with a multiparty system, people hesitate over which of the several left-wing or Christian-democratic parties to vote for. At the same time, after the first elections, it is reasonable to expect that citizens will not shift their preference between party families or blocks with different ideological profiles. And this is the greatest trouble with the stability of the Polish party system or rather the lack of it. In Table 1, in the line 'block volatility' we show, that between 2001 and 2005, over 1/4 of the electorate changed their "block", that is, ideological preferences. This lack of stability, or actually a complete lack of consolidation can be seen even more clearly, when we analyse the data at the individual level. If we were to finish our analysis on the year 2005, we would have to state that the collection of Polish parties not only is not becoming institutionalised, but it is even possible to talk about its de-institutionalisation, because between 1993 and 2005, the inter-block electoral volatility nearly doubled, whereas an analysis taking into account the inter-party volatility (the one, on which analyses in other countries are based) shows, that the majority of Poles (50-60 %) change their political preferences between elections, each time voting for a different party. Let us add, as it is important, that the individual level volatility is reconstructed with the use of survey type research. Thus, the data presented in Table 1 is a result of a rather conservative test; probably while more Poles change their party preferences between elections, not all of them, however (for cultural and psychological reasons) admit to this tendency during interview. But even without this assumption reinforcing the proposals presented here, the situation is dramatic, and, from a comparative perspective, it is statistically deviant and justifies the proposed nomenclature of a "collection of parties" and the "hordes of the electorate" desperately seeking some political sense. This is not meant to sound pejorative, especially of the citizens who are confused by the Polish political elite's obviously unreliable and short-sighted manipulative excess. The electorate's reaction, perfectly understandable from psychological and behavioural point of view, is to disengage; they just decide not to participate in something burdened with such a considerable dose of arbitrariness and uncertainty and thus "unprofitable". We shall finally acknowledge that the situation gets a little better in the years 2005-2007, but with a few reservations: (1) the percentage showing the level of volatility of Polish voters is still is very high, and that applies to the period of significant ideological tension; (2) it is just the period of two years, and not four years as most of the previous ones, hence the change of preferences is smaller; (3) the block division into 'the left-wing and the right wing' loses its significance.

The nature of party competition in Poland

So far we have described the Polish party system using the language of Mainwaring and Scully (1995) as well as their indicators of party system institutionalisation. We shall now proceed to discuss the description proposed by Mair (2002). Let us start with the basic indicator – the degree to which the "party competition structure is closed"; Poland – compared to other countries of the region – is placed somewhere in the middle and, it should be added, with a relatively constant index of the competition closure at about 50%, 46.7%[4] to be exact (for details see Enyedi, Bertoa 2010).

It can therefore be said that as for any new democracy, the consolidation of the Polish party system is "at the standard level", it is sufficiently open and at the same time relatively stable. As a matter of fact, it has not happened recently but rather after the third free elections in 1997. However, if we were to discuss the detailed composition of 1991-2007 government coalitions, we could easily notice, that only once (exactly, one time) and for a very short time, a government coalition appeared that was identical with the one of the previous period, that was a coalition of two parties originating from the former communist establishment: the Democratic Left Alliance with the Polish Peasants' Party (1993-1997 and 2001). In all other cases, the government coalitions were composed of quite different political entities.

The above quoted effective number of parties indicator points to the extraordinary dynamics of the Polish situation, a fall from the double-digit value to 2.8 in 2007. With respect to the dynamics of the phenomenon, nothing similar can be noticed in Central and Eastern Europe; at present, Poland has the lowest indicator, although in the entire transformation period it amounted to 4.8. For the purpose of comparison, within the region, the effective number of parties that is the most favourable for the consolidation of the system can be found in Hungary 3.0 and Bulgaria 3.1.

The Polish party system is not very distinct, either in regards to the indicators of the polarisation of the party system (along the 'left-wing -- right-wing' line), imperfect as they are; it is much less polarised than the Czech, Hungarian or Slovak ones, yet more polarised than the Estonian, Romanian or Bulgarian. There is a certain problem with the interpretation of the system polarisation caused by the fact, that in individual countries, the 'left-wing -- right-wing' dimension has: (a) different meanings and (b) denotes different public issues. What is more, we do not really know, what exactly is the level of polarisation that is 'favourable' for the consolidation of

[4] The highest 'closure' of party competition can be observed for Hungary (75%) and the Czech Republic (56%) , whereas the lowest – for Latvia (27%) and Slovenia (30%)

the party system. A high, even a very high level of polarisation is desirable at the beginning of the transformation process, when the citizens and the parties must send clear signals to each other to show what they wish to support (Huntington 1968), whereas it is not so necessary in the periods of normal evolutionary politics.

Diagnosis of the current condition of Polish democracy

Let us now discuss some selected factors that would let us assess the condition of Polish democracy. In order to avoid a subjective assessment, I will use collective and expert studies – a rating prepared by the Freedom House and SGI – Sustainable Governance Indicators (prepared by the Bertelsman Foundation). The individual elements of the evaluation of the Polish political system differ quite substantially. On the one hand, the elective democracy in Poland is highly valued with regard to "honesty" and the election transparency, the public access to government information, the work of the Constitutional Tribunal and the central bank, foreign and defence policies. On the other hand, Polish democracy receives the poorest marks in the areas such as: freedom of the media (concerning principally the politicisation of public media, since the level of the "media pluralism" is assessed much better), fighting corruption, health care reforms, integration policy (concerning immigrants) or science and education policy. Polish democracy does not come out well when experts look closely at the very technique of government, mainly strategic planning and the coordination of government activities with those of other agencies. It should, however, be admitted that the negative assessment applies mainly to the period of the Law and Justice government (2005-2007), and at present, it is evidently improving; nevertheless, its delayed effects can still be felt. The real Achilles' heel of the system is the administration of justice: its slowness as well as its limited availability.

Another important point seems to be the way in which citizens make use of the public institutions formed in such manner. Unfortunately, Poles stand out, in a negative sense, with regard to their level of participation in elections, even when viewed against the background of their region. Parliamentary elections in Poland have always been accompanied by low voter turnout. It is a telling fact that the highest participation of citizens in the elections was noted in the most recent elections in 2007 and this was still only 53.88 %; only once before, in 1993, have more than half the eligible voters cast their votes.

Another issue is the question of whether the Polish party system is undergoing a cartelisation process and if so, whether it is something that should raise concern. This issue is discussed elsewhere, let me only state at this point that our results in comparative studies, judging from the Central-European perspective, are just average. For example, the Polish system does not seem to be either overregulated or under regulated by the state. As in the majority of the countries in the region, in Poland there is a 'system for regulating party finances' (unlike in Latvia or Slovakia), a political party is also constitutionally recognised as a political system institution (unlike in Latvia). In the years 1990-2007, the Polish Constitutional Tribunal interfered in party matters with average frequency (six times), that is, much more rarely than in Slovenia (22 occurrences) or Slovakia (12 occurrences), but much more often than in Estonia (3), Latvia (2) or Lithuania (2).

There is no doubt that since the adoption of the Act on political parties, state subsidies for political parties have increased several times (at the beginning of the new millennium, the annual subsidies for the biggest party at the time -- the Democratic Left Alliance, amounted to about 11m PLN, and for the party with the similar public support in 2008 – the Civic Platform, it exceeded 40m PLN -- data of the Polish National Election Commission). The relative share of other sources of political party financing – membership subscriptions and parties' own 'assets', has been systematically falling.

Other consequences of the cartelisation of the Polish party system are also visible. Firstly, the expenses on election campaigns have increased considerably along with the role and significance of marketing experts at the expense of politicians dealing with specific policy subjects and party programmes. Secondly, since the early 1990s in Polish politics, there has not been a single important politician working at the central party headquarters who has played a significant political role. All politicians with real power, hold important parliamentary or government positions. Thirdly, since 1997, and certainly since the year 2001, there has not been a single political party in the Polish parliament or Polish politics in general, that did not participate in a government coalition in some previous period. Thus, a process of parliamentarisation and governmentalisation is also taking place. If we look at the above description from the point of view of the "democratic deficit" studies, we should conclude that such a deficit does exist in Poland. In many countries, in a reaction to this alienation of the political elite and the autonomisation of the party system, a mass turn towards democratic innovations (deliberative solutions, participatory budgeting, consensus conferences and the like) can be noticed. This phenomenon is becoming visible in Poland, too.

As with measuring corruption, we have similar difficulties with reliable indicators for the phenomena of political clientelism and protectionism. For Poland, for instance, a figure of 90 000 is quoted as a number of positions that can be distributed by political parties, a great part of which are simply rewards for political party loyalty (Gwiazda 2006; Szczerbiak 2006). While assessing the influence of political protectionism on business activity, the so-called Global Corruption Barometer places Poland precisely in the middle of the Central European group (PL result = 27.5, with the general average = 26.8), much above the level of Hungary (5.5), Slovenia (11.3) or the Czech Republic (16.0), but much below the level of Romania (41.8) and Bulgaria (42.5).

Conclusions

1) The 20th century European experience indicates that there is a positive link between the institutionalisation of a party system and democracy, its sustainability and quality. We do not know yet if this is so in Poland, but there is no doubt that we are much more certain, in 2010, that the democratic transformation is irreversible than we were, let us say, in 1995. And today the Polish party system is much more institutionalised than it was fifteen years ago. The condition of the party system is obviously not the only cause of the sustainability of democracy in Poland, but it certainly does not harm it, either.

2) The Polish party system – against the Central-European background – holds a rather average place with regard to a number of aspects discussed here. This system is neither the most nor the least consolidated. However, there are exceptions.

3) The Polish party system is still characterised by significant electoral volatility and, what is important, – very high voter abstention. This indicates two things: for the consolidation – a difficult road to follow, because the potential for mobilisation of social groups so far excluded from exerting active influence on the political process remains huge due to the fact that it makes the party system more open and the election market -- more flexible. But we also have an opposite example: in 2007 – whether it was justified or not, that is not the point here – a great part of the public decided that it was time to remove the Law and Justice government, headed by J. Kaczyński, from power, because, among other reasons, of an anxiety about the violation of the democratic principles. However, it has not been done in a revolutionary or extra-constitutional way but with the use of a legitimised procedure of democratic elections. In other words, the established rules of

the game have been used in order to re-arrange the ruling coalition. One should notice, at the same time, that those were the parliamentary elections, in which the highest percentage of eligible voters took part.

4) After almost twenty years of practicing democracy we are still not sure whether the professionalisation of party operations and the functioning of the party system as a whole is taking place or not. In a way, it is because parties constantly change their formal and programme image. Therefore more time is needed in order to be able to form definite judgements about the effectiveness of this system. On the other hand, we are not sure whether we should look forward to the process of political parties becoming independent of the 'whims' of some voters groups (not always well informed about the complexity of managing the state affairs) or whether we should rather fear that this professionalisation of political parties may go too far, making it impossible for politicians to play a creative and truly leading role in undertaking reforms.

5) However, we have noticed phenomena that clearly indicate the consolidation of the Polish party system – a smaller number of parties, definitely smaller percentage of wasted votes, low disproportionality of the system, etc The question remains open as regards the political 'contents' of this consolidation – whether the electoral oppositions that came into being in 2005 are signposts full of economic, social and cultural meaning, pointing to real differences essential for the everyday life of Poles or whether it is only a distinction made for marketing and public relations purposes without any significance for the collective existence in Poland. The issue in question is a dichotomy drawn by politicians of the Law and Justice party during the 2005 election campaign, between their vision of a "state of solidarity" and the "liberal" state of the Civic Platform. The state of solidarity from the program of PiS would take care of the poor and the excluded, described sometimes as the losers of the transformation and would take the side of community values. Politicians of the Kaczyński party accused their adversaries of favouring "the rich" at the expense of lower social groups. They also portrayed the liberal image of the Civic Platform as a mask for the "evil" liberals, for whom the common good is the good of some selected groups, in accordance with the liberal principle that everyone should take care of themselves.

6) The great electoral volatility was accompanied by falling voter turnout (up to 2005) whereas the considerable mobilisation of the electorate between 2005 and 2007 (by 14 percentage points) was accompanied by a fall in electoral volatility, which in itself, is a rather strange pattern. One might logically expect, that since – as it was the case between mid 1990s and the year 2005 – fewer and fewer citizens were prepared to take decisions

concerning who should be in power, they should at least reveal a certain stability of their political preferences. This was not the case in Poland.

7) Finally, let us emphasize that a phenomenon of the same government coalitions remaining in power for several terms of office will be a clear indicator of the consolidation of the system. Until 2007, not only have we never had political continuity in the sense of the support for the ruling coalition for a second consecutive term of office, but each time we dealt with a different arrangement of the components of those coalitions. It is certainly one of the most important factors that has a negative influence on the assessment of the quality of Polish democracy, in such areas as strategic management or great reforms, e.g. of the health care services. In order to carry out such undertakings effectively, a longer perspective is necessary for planning and the implementation of changes.

Bibliography

Cześnik, M. & R. Markowski. 2004. 'Uwarunkowania budowy polskiego systemu partyjnego: instytucje i procesy', in: I. Jackiewicz, ed. *Budowanie instytucji państwa 1989-2001. W poszukiwaniu modelu.* Warszawa: Wydawnictwo Sejmowe, pp. 25-47.

Enyedi, Z. & F. C. Bertoa. 2010. 'Patterns of Party Competition (1990-2009)', in: P.G.Lewis & R. Markowski, eds. *Europeanising party politics: Comparative perspectives on central and eastern Europe.* Manchester: Manchester University Press (in print).

Gwiazda, A. 2006. 'Party patronage in Poland: the Democratic Left Alliance and Law and Justice compared'. Paper prepared for the ECPR Joint Sessions of Workshops, Nicosia, 25-30 April.

Kopecky, P. & M.Spirova. 2010. 'Party management and state colonization in post-communist Europe: the European dimension', in: P.G.Lewis & R. Markowski, eds. *Europeanising party politics: Comparative perspectives on central and eastern Europe.* Manchester: Manchester University Press (in print).

Mainwaring, S. & T. Scully. 1995. *Building Democratic Institutions. Party Systems in Latin America.* Stanford: Stanford University Press.

Mair, P. 1997. *Party System Change. Approaches and Interpretations.* Oxford: Clarendon Press.

Mair, P., W.C. Mueller, F. Plasser, red. 2004. *Political Parties & Electoral Change.* London: Sage

Markowski, R. 2006. “The Polish Elections of 2005: Pure Chaos or a Restructuring of the Party System”, *West European Politics,* vol.29, no. 4, September 2006, pp. 814-832.

Markowski, R. 2007a, “System wyborczy czy zbiorowisko partii? O stabilnym rozchwianiu polskiej polityki”, in: Mirosława Marody, (ed.), *Wymiary życia społecznego. Polska na przełomie XX i XXI wieku (wydanie nowe)* Wydawnictwo Naukowe SCHOLAR, Warszawa 2007, pp.241-268.

Markowski, R. 2007b. „System partyjny” in: Lena Kolarska-Bobińska, Jacek Kucharczyk, Jarosław Zbieranek (eds.) *Demokracja w Polsce 2005-2007,* Instytut Spraw Publicznych, Warszawa, 2007, pp. 145-180.

Sartori, G. 1976. *Parties and Party Systems: A Framework for Analysis.* Cambridge: Cambridge University Press.

Szczerbiak, A. 2006. ‘State party funding and patronage in post-1989 Poland’, *Journal of Communist Studies and Transition Politics* 22, pp. 298-319.

Jarosław Zbieranek

The system of financing political parties in Poland – experience and challenges

Immediately after the political breakthrough of 1989 the foundations of the democratic party system were built in Poland. In the first act of parliament on political parties, passed in 1990, the focus was primarily on the issues related to the freedom of forming political parties. At this time the issue of funding such parties was dealt with very briefly. This was because a rather liberal assumption prevailed, that in the political reality, political parties should manage as best they could in this respect, and the weakest would simply disappear from the scene[1]. However, the negative experience of Polish political party funding of the early 1990s where pathological practices, including cases of financing parties and election campaigns from obscure sources – sometimes foreign, showed that it was necessary to regulate the issue of political parties financing to a much greater extent. In 1997, with the introduction of a new Polish constitution, the principle of the open character of political parties financing was introduced. In the Act on political parties, the basic rules of political party financing were enunciated (among other things, the admissible sources of such funding were listed). The act also contained provisions governing the possibility of parties obtaining reimbursement of campaign costs from the state budget (the so-called subsidies). In spite of such measures, in the late 1990s, a heated debate still continued on the need to introduce some significant changes in the system of political parties funding. Attention was drawn to the rapidly growing costs of both everyday party operations and the election campaigns and, thus to the pressures created that may lead to some pathological, corruption-fostering connections between politics and various interest groups and business. In

[1] M. Chmaj, *Nowy system finansowania partii politycznych w Polsce*, „Przegląd Sejmowy" 2002, No. 2, pp. 9-31.

numerous discussions, one prevalent theme was that the main burden of financing political parties should be transferred to the state budget. It was argued that such a solution would stabilise the party system, and, at the same time, would provide a competitive level-playing field between the post-Communist parties, which had access to the financial resources and an organizational base "inherited" from the communist period, and the more recent formations which had been built from scratch, in independent Poland.

Eventually in 2001, a decision was taken to shift the main burden of financing political parties to the state budget; this proved very important for the functioning of the public life in Poland. In addition to creating a system based on the consistent transfer of public funds for party activities, the possibilities of funding such parties from other sources were significantly limited, by prohibiting such donations by legal entities (companies/ entrepreneurs). From that time onwards, parties can only be financed from membership subscriptions, donations (of a strictly defined limited amount and only from individuals), legacies, bequests, bank loans and from the afore-mentioned public funds (state budget grants and subsidies - reimbursement of election campaign costs). Access to such public funding is limited. Only those parties which in the elections to the Sejm (the lower chamber of the Polish parliament) gain at least 3% of the valid national vote (in case of a coalition – 6%) may count on public funding – grants for their statutory purposes. The grant level depends on the results of the individual parties in the parliamentary elections; the actual amount is calculated according to a formula (an algorithm) included in the Act on political parties. The grants are transferred to parties in instalments, across the entire term of the Sejm. Parties must lodge such funds in a separate sub-account. In addition, the Act obliges parties to allocate 5-15 % of the grant to an Expert Fund – to be dedicated to funding expert opinions and educational activity. Apart from the grant, political parties also receive earmarked subsidies from the state budget as reimbursement for expenses incurred on election campaigns.

The system of financing political parties in practice

On reflection, one of the main consequences of the implementation of this new system of financing political parties from the state budget has been that the most important political parties have made a measurable financial profit. We can observe that the parties which receive such grants have seen their budgets increase substantially in comparison to the party financing system prior to 2001. Public funds have not only replaced the resources

previously acquired from individuals and business, but have exceeded them several times. It cannot therefore come as a surprise, that the state budget grants have become the main source of income for the eligible political parties. Funding from other sources allowed by law – membership subscriptions or donations from individuals, now account for a much smaller, if not marginal, percentage of party budgets.

The most important purpose of implementing this system, ie. breaking the corruption-generating links between political parties and business, has undoubtedly been achieved. The attraction of such contacts has definitely diminished. They are simply not needed any more, since funding from the state budget significantly exceeds the current needs. Any attempts to circumvent the statutory ban and try to obtain additional resources from business circles, apart from budget grants, is, in turn, very risky as parties may lose the grant as a consequence.

Funding political parties from the state budget raises a great deal of controversy among researchers studying the Polish political scene. If assessed from the perspective of the functioning of the party system, it undoubtedly has both advantages and disadvantages.

"The state budget support for political parties organised and stabilised the Polish political scene. However, this essentially positive process has two negative effects – in the long run, it causes the fossilisation of the political landscape and it induces the parties to remain passive[2]*".*

The relatively steady financial support that political parties receive from the state budget every year has made the Polish political party system more stable and predictable. On the other hand, however, new political entities have very slight chances of making it into parliament. When analysing the new situation on the Polish political party scene, it is worth recalling the model of a "cartel" party, described by R. Katz and P. Mair[3], according to which parties that have access to public funds, become dependent on it and are not interested in changing this state of affairs, forming an isolated cartel. A crucial factor is that the parties outside this cartel find it very difficult to compete on an equal basis and to enter this structure[4]. That also applies to those organisations that have "dropped out" of the cartel. The actual disintegration or splitting of parties that have lost public funding after

---

[2] W. Gadomski, *1 procent na partie,* „Gazeta Wyborcza" daily of 11 March 2008.

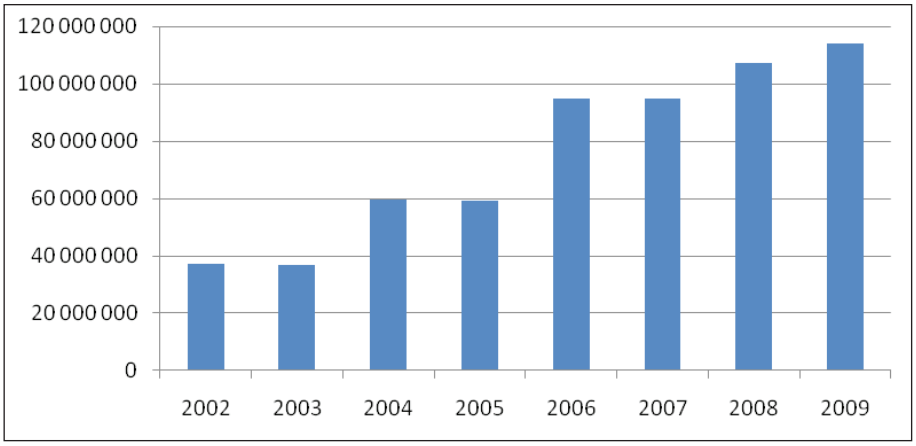
[3] P. Mair, R.S. Katz, *Party Organization, Party Democracy and the Emergence of the Cartel Party*, [in]: P. Mair, *Party System Change: Approaches and Interpretations*, Oxford University Press 1997, p. 94.

[4] This idea was recalled by Kinga Wojtas (see K. Wojtas, *Finansowanie partii politycznych w Polsce w latach 2002–2006*, „Athenaeum" 2008, no. 19).

the 2007 elections: Samoobrona [Self-defence] and Liga Polskich Rodzin [League of Polish Families], confirms this opinion.

It is also worth pointing out the gradual, yet significant, increase in the amounts that the state transfers to political parties. In 2003, all eligible parties, received, in total, over 36 million PLN in grant funding, two years later – it was more than 59 million PLN. Since January 2009, the grant funding allocations have increased, because of the inflation, by 6.5%[5], so the state budget has spent over 114 million PLN on such grants.

Chart 1. Cost to the state budget on the grant paid in the years 2002-2009 (in PLN).



Source: prepared by author on the basis of the data provided by PKW [National Election Commission].

If one looks at the amounts that individual political parties have received from the state budget since the introduction of the grant system, one may notice that, in the years 2002-2009, the biggest beneficiaries were: Prawo i Sprawiedliwość [Law and Justice] party and Platforma Obywatelska [Civic Platform] (that is, new parties with an anti-communist opposition background).

The fact that parties receive such substantial amounts from the state budget is the source of multiple controversies. It all results from the fact that the system implemented in 2001, and in particular, the algorithm

[5] The legal basis: *Regulation of the Minister of Finance dated 7 November 2008 on increasing the amount of state grant for a political party or an election coalition* (Journal of Laws 2008, no. 207, item 1301). The Regulation entered into force on 1 January 2009.

of calculating the grant, has been designed with an assumption of a large number of entities eligible to receive public funding. Such a dramatic polarisation of the political scene and the reduction of the number of parties eligible for state budget grants had not been anticipated.

The studies carried out by the Institute of Public Affairs[6] have shown a varied approach of the parties receiving the grant towards the use of these funds. The interviewed representatives of political parties have been aware that these are public funds, however they usually do not apply any distinct, more rigorous procedures to their management. Thus, the funds are used by the parties, without limitation, for all the purposes within the broadly understood category of "statutory activities". An analysis of the financial information concerning the disbursed grant, prepared by political parties every year, leads to a conclusion that those parties that received lower amounts usually spent them on everyday "survival" – that is, maintaining their offices, the remuneration for their permanent staff, etc. Whereas the larger parties invested significant amounts in "other services", a category which includes, in particular, media and promotional services. Thus, the media campaigns carried out with the use of these funds help to further strengthen the political position of the parties that have already been strong, which is a cause of universal criticism.

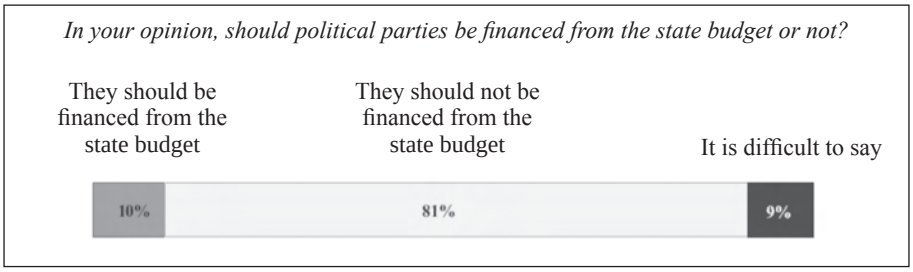
Public opinion on the system of financing political parties in Poland

As the results of a public opinion poll carried out by CBOS in April 2008 show, the majority of Poles are aware that political parties are financed first of all from the state budget. That is the opinion of 66% of respondents, whereas 11% think that the main source of parties' income are membership subscriptions and 9% that the funding comes from rich sponsors. At the same time, Poles are definitely against financing political parties from the state budget. Only one in ten respondents is in favour of such a solution[7]. Whereas as many as 81% say that political parties should not be financed from public money.

[6] J. Zbieranek (ed.), *Subwencje z budżetu państwa… (op. cit).*

[7] *Financing of political parties*, CBOS research announcement (BS/59/2008), Warsaw, April 2008.

Chart 2. Consent of citizens to financing of political parties by the state



Source: CBOS

The majority of the public (59%) responded in 2008 that political parties should sustain themselves – with membership subscriptions and donations from individuals. The respondents also indicate business activity as an alternative source of income (19%). Only 6% of respondents believe that political parties should be financed from the state budget.

It seems that one of the reasons for such public opinion is the systematic criticism of funding political parties from the state budget, expressed by most of the media, and especially by the tabloids. Even though the majority of such publications only reproduce, in a grotesque manner, the stereotype of a waste of public funds by party activists, still, it seems, that the parties themselves contribute to sustaining such a public image by spending large sums on extensive and costly media campaigns. In this context, another problem is the application of the principle of the transparency of political parties funding and the poor public control of party finances. As it has already been mentioned, information about the usage of grant funds by political parties that may be found in official sources, is rather small. An interested citizen may look into annual reports and financial information, but he will not be able to find a lot of data there.

Recent action aiming to change the system of financing political parties

A political party that since its formation in 2001 has been explicitly opposing the state budget funding of political parties is Civic Platform (paradoxically – it is the greatest beneficiary of the system of financing political parties from the state budget). The proposition to abolish state assistance to political parties (which is a part of a liberal concept of the state) has became a flagship item on the agenda of the Civic Platform and its

leader – Donald Tusk – in the parliamentary and presidential campaigns of 2005.[8]

In October 2007, Civic Platform were the victors in the parliamentary elections, and became the largest political group in the Sejm. Following such previous declarations, on 22 February 2008 the parliamentary club of the Civic Platform submitted to the Speaker of the Sejm, a draft of an act that was designed to change radically the system of political parties financing[9]. Referring to the demands voiced by PO practically since the formation of the party, this draft provided for abolishing the existing model of financing political parties from the state budget.

The submission of the draft provoked a vigorous public debate. The proposals of Civic Platform met with serious criticism of all political parties having seats in the Sejm. Experts were also very sceptical. The main objection was the lack of a proposed new system of party funding, adjusted to Polish reality, that would replace the abolished one. The proposal of PO was assessed as one that would send the Polish political party system off in an unknown direction.

The new system of financing political parties proposed by the Civic Platform also raised concerns of fostering corruption practices which had been successfully curbed by the mechanism of financing political parties from the state budget. Prof. Piotr Winczorek, an outstanding constitutionalist, was one of those who drew attention to this threat, by arguing that "financing from private sources provides a basis for various attempts of political bribery"[10].

Eventually, a draft was submitted[11] that provided for the abolition of the grants and subsidies – leaving donations from individuals as the main source of financing.

Meanwhile, experts and independent think tanks presented their own proposals for necessary changes in the Polish system of financing political parties[12]. Particular emphasis was placed on the necessity to maintain state budget grants and subsidies (as they fulfilled their essential functions), but

---

[8] See M. Walecki, J. Zbieranek, *Finansowanie polityki* [in:] L. Kolarska-Bobińska, J. Kucharczyk, J. Zbieranek (ed.), *Demokracja w Polsce 2005-2007*, Warszaw 2007.

[9] *Deputy's draft of an Act on abolishing the financing of political parties from the state budget* (*Sejm publication no. 764* of 22 February 2008).

[10] K. Manys, *Procent podatku zamiast subwencji dla partii?*, „Rzeczpospolita" daily of 23 February 2008.

[11] *Authors correction to the to the deputy's draft of an Act on abolishing the financing of political parties from the state budget (Sejm publication no. 764* - A of 21 July 2008).

[12] M. Chmaj, *Rewolucja jest niepotrzebna*, „Gazeta Wyborcza" daily of 27 May 2008, J. Zbieranek, *System finansowania partii politycznych w Polsce – kierunki zmian*, "Analyses and Opinions" 2009, no. 91.

with the simultaneous introduction of deep changes in the system, of which the most important included:

1. A change (reduction) of the grant allocations to individual political parties. For this purpose, it is necessary to **reformulate the algorithm** of calculating the grant amount. As practical experience has shown, the funds received by political parties (which is undoubtedly the result of the polarisation and the smaller number of political parties) are definitely too big. A rational reduction of those amounts should also encourage political parties to obtain larger funds from its members and sympathisers.

2. A change of the structure of expenses of political parties:

The proposals are aimed at disciplining and organising expenses of political parties, which, having large public resources at their disposal, spend them, for instance, on media campaigns. They include:

a) expansion of the Expert Fund – parties should allocate more funds for research and analytical purposes – the Act on political parties requires them to allocate 5-15 % of the grant to the Expert Fund, but most parties allocate 5%, that is, the obligatory minimum, and sometimes even less than the required threshold (such behaviour is not threatened with any sanctions).

b) radical reduction of expenditure from the budget grant funds on media campaigns – introducing restrictive, low limits for funds that parties can allocate for this purpose – e.g. 5 % of the grant.

3. Ensuring full transparency of the disbursement of state budget funds. At present, access to information about the way in which parties use public money is insufficient. The financial information form should be more detailed and an obligation should be placed on political parties to submit to the National Election Commission the entire financial and accounting documentation confirming the expenses incurred, as it is required in the case of the settlement of election campaign accounts. In addition, it is proposed that political parties should publish all financial reports and information on their websites.

4. Enhancing the system of supervision by the National Election Commission [PKW] over political parties' expenses as well as strengthening the control exercised by the public. PKW should have wider prerogatives with respect to inspecting the ways in which public money is spent by political parties. It is proposed that PKW audit should cover not only bank statements but all the specific financial and accounting documents (at present only expert auditors have access to them). In order to provide more effective supervision instruments, the statutory institution of filing objections to financial information should be strengthened[13].

[13] J. Zbieranek (ed.), *Subwencje z budżetu państwa…* (op. cit).

In February 2009, another chapter was opened in the dispute concerning the model of financing political parties. PO politicians suggested that the grants and subsidies for political parties should be withheld entirely for two years, which would bring approx. 200 million PLN savings to the state budget. The idea was, once again, criticised by other parties. The critics pointed out to the fact, among other things, that parties employed staff, experts and had other obligations from which they could not withdraw overnight[14].

A voice of reason in the discussion was a proposal of the (SLD) Left-wing Club, which on 12 February 2009 submitted to the Sejm Speaker, a draft proposal for changes in the system of financing political parties[15]. It referred, to a great extent, to the previous suggestions of the expert circles. It proposed a reduction, in the years 2009-2010, of the grant amounts by changing its calculation algorithm (which would, in practice, significantly reduce the grants for big parties and result in smaller reductions for small parties). In total, it would allow the state budget to save 34 million PLN per year. Another important change was the introduction of a limit on the use of budget grant funding for media and promotional campaigns. The grants could be used for activities which aimed at winning support only during the periods of election campaign.

The project of the Left also provided for an increase of the party's Expert Fund, to which 10 to 20% of the grant would be allocated (instead of 5-15%). Money from the Expert Fund would be spent on financing legal, political, sociological and socio-economic expert opinions. This change would improve the quality of projects and activities undertaken by political parties and support the development of analytical and forecasting centres, the so-called think-tanks.

It soon turned out that, unlike the PO proposal, the draft submitted by the Left gained wider support of political groups which led to its[16] prompt

[14] It was also stressed that the Civic Platform could count on substantial funding from the Euroepan Parliament (in connection with the expected representation in the EP after the 2009 elections). See Mariusz Staniszewski, *Bez dotacji partie sobie poradzą, zwłaszcza PO,* „Polska The Times" daily of 7–8 February 2009.

[15] *Deputy's draft of an act on amending the Act on political parties, the Act on the election of the President of the Republic of Poland, the Act – Electoral law governing the elections to the Sejm of the Republic of Poland and the Denate of the Republic of Poland and the Act – electoral law governing the elections to the gmina councils, poviat councils and voivodhip assemblies* (Sejm publication no. 1739 of 12 February 2009).

[16] The Act dated 24 April 2009 on the amendment of the Act on political parties and some other acts, Sejm publication no. 1862. By a ruling of the Constitutional Tribunal, (Kp 6/09) the Act has been deemed compliant with the Constitution of the Republic of Poland.

adoption[17]. In accordance with the legislative procedure, the Act was sent to the President of Poland for signature. After an analysis of the Act, the President found it inconsistent with the Polish Constitution and on 18 May 2009 referred it to the Constitutional Tribunal. However, in January 2010, the Tribunal[18] ruled that the new act was compliant with the Polish Constitution, but required certain corrections. The new regulation has not entered into force to this day[19].

Towards changes in the system of financing political parties in Poland – what is desirable: evolution or revolution?

The system of financing political parties from the state budget, in place in Poland since 2001, fulfils the role envisaged by its authors – above all, it eliminates corruption-fostering situations in the procedure of raising funds by political parties (preventing unregulated contacts with business interests so frequent in the nineties or eliminating election campaigns that were funded with uncontrolled money delivered "in suitcases"). In addition, it organised the political party system and provided it with a civilised framework; it ensured the stability of the Polish political system. It is obviously possible to find fault with the system: following the polarisation of the political scene and the fall in the number of political parties in the parliament, the grant amounts have become quite considerable. Parties have used the funds with great freedom, allocating large sums for media campaigns. The group of parties receiving the grant has become a closed system – parties which do not qualify for state budget funding (those who won less than 3% support in parliamentary elections), are destined for marginalisation and hand-to-mouth existence. One should also remember that the burden on the state budget on account of the grant is considerable – in the years 2002-2009, almost 604 million PLN has been consumed.

It is certain, however, that the proposed sudden, revolutionary abolition of the state budget financing of political parties based on grants and subsidies, with no indication of a realistic option for acquiring funding from other sources, may lead to some negative effects, that may increase corruption risks and inequality on the political scene.

---

[17] More about this work in: J. Zbieranek, *Zmiany w prawie wyborczym i finansowaniu partii politycznych* [in:] L. Kolarska-Bobińska, J. Kucharczyk (ed.), *Demokracja w Polsce 2007-2009*, Warsaw 2009.

[18] Ruling Kp 6/09 dated 29 January 2010, „Monitor Polski" [Official gazette] No. 4, item 46.

[19] As on 12 May 2010.

The afore-listed negative effects indicate a need for a system review, for updating, and for evolutionary changes. The modifications should include reduction of the grant amounts while also disciplining parties with respect to the ways of allocating these funds by limiting spending for media campaigns and increasing the expenditure on expert work. These ideas have been included in the draft act proposed by the Left which will probably enter into force soon.

However, the act does not exhaust the list of all necessary modifications of the system. They concern the solutions that would help increase the citizens' awareness of the expenditure of funds from the budget grant (that is, the issue of public control). The changes concerning the supervision of political party spending carried out by state agencies are also important. They include increasing the role of the National Election Commission as well as introducing more rigorous reporting requirements for political parties[20].

In the longer term, it would be worth considering the introduction of such mechanisms that would enable greater involvement of citizens in the procedures and would allow them to know how strong their voice is – also in the "financial" aspect. Interesting proposals concerning the implementation of a voucher system[21] have been, for some time, considered in the United States (similar proposals are also formulated by some experts of the Council of Europe). The solution assumes, that a certain pool of funds from the state budget allocated to political party (electoral committee) financing is divided directly by the voters themselves. On the election day, apart from a ballot paper, voters would also get a special voucher, with which they could transfer a specific amount of state budget funds to a political party (or in proportion determined by themselves – to a few parties). Such a solution would certainly strengthen the public legitimization of the system of financing political parties from the state budget and would give citizens a sense of real influence on the way these funds are distributed.

[20] J. Zbieranek (ed.), *Subwencje z budżetu państwa…* (op. cit.).

[21] J. Zbieranek, *Voucher – pieniądze dla partii politycznych w rękach wyborcy*, text under preparation.

Małgorzata Fuszara

Participation of women in public life and women's rights in Poland

It is not easy to evaluate the changes that have taken place in the area of women's rights and gender equality over the last twenty years and the conclusions that we can draw from the recent history are equivocal. There are a few reasons for this. We entered the process of transformation with quite extensive legal regulations in this area and the memory of a facade role that the idea of gender equality played in the communist times. In the analyses relating to legal regulations, the period after 1945 is referred to as the period of inclusion (Zielińska 2002), as those regulations were supposed to enable women to be included in the traditionally understood public sphere, i.e. in politics, and especially enabled to pursue professional careers. A number of solutions were introduced which had been intended to be "gender neutral" and they often turned out to be "gender blind". Apart from that, a number of protective regulations were in force, especially in the area of labour law, which had been introduced because of biological differences between sexes and had been expected to make it possible for women to play both the role of an employee and the traditionally understood woman's role as mother. (Zielińska 2002). Also in the area of reproductive rights, regulations had been introduced that ensured women a possibility to make their own decisions in that sphere – since 1956, relatively liberal abortion law had ensured access to abortion and seemed to be an unquestionable solution.

During the first stage of the system transformation, it appeared that a number of labour law regulations, especially those of a protective character, acquired, in the new economic system, a completely different significance. These same regulations worked one way in a system where the state was practically the only employer and where, for ideological reasons, unemployment did not exist and in a completely different way in a system

with competition on the labour market and where workers are vulnerable to job loss and unemployment. The protective provisions started to exclude women from many spheres of life and, in particular, made it difficult for them to function on the labour market. The phenomena that indicated those difficulties after 1989 included a higher rate of unemployment among women than among men, especially the over-representation of women in the group of long-term unemployed, as well as the fact that even university education did not protect women from being unemployed. Analyses carried out under the new system, have also shown that during communist times, ideology of equality was not accompanied by actual equality and that women entered the period of transformation as workers with lower wages. The differences in pay could not be explained in any other way than by invoking discrimination on the labour market. (Domański 1992).

Another problem was challenging the existing solutions in the area of reproductive rights. One of the first changes proposed after 1989 was to limit the right to abortion and, initially, even a proposal for a complete ban on abortion and severe punishment to accompany this proposed prohibition. Opposition against this proposal mobilised women who stood up for their rights. Questioning of the long-standing right to decide in this matter, raised a lot of protests and gave birth to a new grass-roots women's movement which managed to collect over a million signatures under a motion for a referendum to be held on that matter. The motion was, however, rejected by parliament, which was perceived by people involved in the movement as ignoring the voice of women and an attack on their rights. It was also pointed out that one of the reasons for the impossibility to defend women's rights was the low percentage of women represented in the parliament (descriptive representation), which entailed inability on the part of female members of parliament to play the role of substantive representation.

Participation of women in politics

At the beginning of the 1990s, in all post-communist countries the percentage of women in parliaments fell. It was no different in Poland, where that number dropped initially to 13% (1989), and then to 10% (1991). Thus, in the whole region, while the parliaments were regaining their real legislative power, the percentage of women in political representation was falling.

In communist times, parliaments in the region played only the role of a facade. What was more, among women MPs at that time there was an overrepresentation of poorly educated women whose ability to speak with

"their own voice" was limited not only because of the political system but also because of such a way of selecting the women candidates as to ensure that they would not have any influence on the matters of state (Siemieńska 1990). Another indicator on the exclusion of women was their absence from the bodies that held the real power at the time, that is the top management of the communist party. In spite of the low significance of the parliament at that time, the percentage of women MPs in the Polish assembly was not high: the highest percentage was 23% of women among all the MPs.

The surveys carried out both among the public and the members of parliament (Fuszara 2006) have indicated a number of reasons to explain the under-representation of women among those who hold power. They include first of all: burdening women with duties in the private sphere, such as maternity, family, housework, responsibility for others; apart from that, tradition, customs and stereotypes assigning men to the public sphere and women – to the private one; barriers created by men against women such as favouring men, fear of women's competition, male chauvinism. On the other hand, what is often indicated, is the reluctance of women to take on such roles, lack of interest and political engagement of women, and also their personal features such as, little combativeness, gentleness, acquiescence, which make it difficult to function well in politics. It is worth emphasizing that in the recent years, a growing number of people believe that the fundamental reason for the low representation of women is discrimination which prevents them from holding important positions and power.

There are certain mechanisms that deny women access to politics at the stage of candidate selection. The main barrier that women come across is, in this case, inequality in "access" to places on the candidates' lists. All parties put significantly more male candidates on their lists than women. Moreover, they very often put women on places from which they have practically no chance of getting elected to parliament. In many countries now, quota systems have been introduced to be applied to election lists in order to stop such mechanisms. In Poland, attempts to introduce such a system have been made at two levels: introduction of quotas to the generally binding legal regulations as well as to internal regulations of political parties.

Introduction of quotas into the generally binding provisions has been proposed for many years as part of the law on the equal status of men and women. Drafts of such an act have been prepared jointly by the Parliamentary Women's Group, women's NGOs and female experts since the beginning of the 1990s, and they have been modelled on Scandinavian regulations, and especially the Norwegian statute. Similarly as in the latter act, the Polish act has been designed to provide comprehensive solutions to the problems of equality of men and women, create mechanisms to prevent gender

discrimination and establish institutions that would safeguard equality. The solution that has raised most resistance on the part of politicians has been the provision introducing the quota of 40% of people of both sexes, relating not only to the lists of candidates but to all public authorities. The draft had been submitted to the Sejm several times (some later drafts had the quota reduced), it was, however, rejected by the parliament every single time (Fuszara 2006). After the failure to have that draft passed, it was proposed to introduce the quota system to the electoral law. The proposal to introduce such a mechanism was submitted "from the floor" on behalf of the Freedom Union by Olga Krzyżanowska, MP, during the debate on the electoral law in 2001. The quota in her proposal was for a minimum 30% of people of each gender to be present on the candidate's lists. That proposal was rejected with practically no debate at the parliament.

So far, in Poland, it has not been possible to introduce a quota system into the generally binding legal provisions.

Attempts to introduce quotas by individual political parties have proven more effective. Before the elections of 2001, three political parties: Unia Wolności [Freedom Union], Unia Pracy [Labour Union] and Sojusz Lewicy Demokratycznej [Democratic Left Alliance] introduced quota systems under which there had to be at least 30% representation of each gender on the lists of candidates. That rule had been made most formal by the SLD, which introduced such a provision into its Statutes[1].

Platforma Obywatelska [Civic Platform], which won the elections in 2007, does not apply a quota system. However, before the 2007 elections, following the motion of one of its female members (Iwona Śledzińska-Katarasińska), the party adopted a resolution under which one of the first three places on each list of parliamentary candidates was to be held by a woman. In most constituencies (34 out of 41) that rule was obeyed, in 3 others, a woman could be found on the 4th place. In spite of adopting that rule, in four constituencies (out of 41) the first woman on the list could only be found further down the list (in two constituencies – on the 6th, in further two – on the 9th place). This illustrates how difficult it is for women to secure top places on the lists of electoral candidates, even if a principle adopted by their party makes it obligatory to guarantee such a place for them.

The two other parties that are currently represented in the parliament, Prawo i Sprawiedliwość [Law and Justice] and Polskie Stronnictwo

[1] Art. 16:1. Men and women shall be equally represented among the candidates to party management at each level and candidates for delegates. None of the sexes may be represented in the proportion lower than 30 percent. 2. To candidates for public offices the provision of 1 above shall apply accordingly.

Ludowe [Polish People's Party] do not apply any quota systems or any other regulations concerning equality of men and women.

Thanks to the quota system described above, applied to candidates' lists by the three parties in 2001, the proportion of female candidates on those lists increased significantly. SLD may serve as a good example – in 1997 women accounted for only 15% of candidates on the SLD lists, and in 2001 on the joint lists of SLD-UP they already made 36% of all candidates. The greater number of female candidates resulted in the greater number of female MPs in the Sejm.

Another problem consists in the inequality in promoting male and female candidates who are to take part in elections. Detailed analyses of election television spots have shown that political parties promote mainly men: the great majority of candidates delivering their speeches on television are men, and the disproportion applies particularly to the time of speeches made by people shown on the screen. Parties allocate 80-90% of time to men speaking, which automatically means a much smaller chance for women candidates to promote their own candidacy (Fuszara 2006).

Women also face a series of problems once they become members of parliament because they come across various barriers to their activity. Those may include a glass ceiling, preventing women from reaching high-ranking positions in the power structures, questioning their competence, making their role look infantile and insignificant, paying excessive attention to physical features, treating them not as female politicians but as decorations or people who "have charms to sooth the savage manners", excluding them from informal meetings during which important decisions are made (Fuszara 2008).

The fact that women are in a minority in the parliament is the reason why they also face a number of obstacles in representing women's interests, which has been particularly evident in Poland in relation to changes concerning reproductive rights, attempts to introduce regulations ensuring equal chances of men and women in exercising power and to introduce comprehensive anti-discrimination provisions.

The Parliamentary Women's Group [PGK] established in 1989 was expected to provide a tool for effective lobbying for women's rights in the parliament. It was created as a non-partisan grouping, with the purpose of articulating the interests of women, proposing legislation that would ensure the promotion of those interests as well as providing a platform for communication between women's organizations and female politicians. Over time, PGK has lost its non-partisan nature, its contacts with women's NGOs have become less close and nowadays its activity is less and less noticeable. At the time of its beginnings, it was the Parliamentary Women's Group

that initiated debates and provided room for discussion over problems and interests of women, promoted whole bills as well as individual provisions important for women, pressured the government to introduce a national mechanism ensuring equality of men and women. Now there is a clear lack of such a group within the parliament.

Governments and gender equality

After 1989, the fortunes of the national mechanism which, on behalf of the government, was to ensure equal chances and guarantee the absence of discrimination, have been changing. Back in communist times, as the fulfilment of the obligations undertaken during the UN Conference in Nairobi in 1985, the office of the Government Plenipotentiary for Women was created, the position held at that time by a Deputy Minister for Labour and Social Policy. In 1991, the Office of the Plenipotentiary for the Family and Women was formed, placed at the Prime Minister's Chancellery and reporting directly to the Prime Minister. At the beginning of its activity, the Office played the role of a forum for women activities, similar to the PGK's role. The fortunes of that Office, however, varied and depended on the attitude of subsequent cabinets towards the importance of gender equality. One of the significant initiatives undertaken after the UN Conference in Beijing in 1995, was the establishment of the Forum for Cooperation between NGOs and the Government Plenipotentiary for the Family and Women, which gave rise to cooperation between government administration and women's NGOs, including joint work on the "National Programme of Activities for Women", proposing and providing opinions on legislative solutions and other initiatives concerning gender equality. After a period of stagnation in the late 1990s, when the Office did not take any practical action, it was transformed (in 2001) and the office of the Government Plenipotentiary for Equal Status of Men and Women was created. It was then that a number of important initiatives and actions promoting equal chances of men and women were undertaken. On the basis of the "National Programme of Activities for Women – 2nd Implementation Stage for the years 2003-2005", regional plenipotentiaries were appointed. The Plenipotentiary prepared a draft law on counteracting family violence, as a separate legal act aimed at increasing the protection of the victims of violence, which was adopted by the Sejm in 2005. The Plenipotentiary also implemented a number of pre-accession programmes and, later, community programmes, organizing, for instance, training for judges, prosecutors and police officers and public administration officials on gender mainstreaming and gender equality (Fuszara, Spurek 2007).

Currently (2009), the government does not seem to have any coherent policy, programme or plan concerning women and gender equality. Two government agencies are responsible for formulating and implementing equality policy – a department within the Ministry of Labour and Social Policy and the Government Plenipotentiary for Equal Treatment. The Plenipotentiary operates within the Council of Ministers, and her remit includes, coordinating government activity related to equality issues, counteracting discrimination, monitoring the situation from the point of view of gender equality, analysing draft legislation from an equality viewpoint. So far, it has not been possible to confirm any single case showing that such activities have actually been carried out.

The women's movement and women's non-governmental organisations

Since 1989, in Poland, a number of grass-roots women's initiatives have become institutionalised and have taken on a form of associations, foundations and other organizations. The already mentioned draft law, proposing a ban on abortion has played a substantial role in making women active. The most interesting result that arose from this law proposal was the mobilisation of women's groups, attempts to define the needs and interests of women and the establishment of some new women's organizations.

The current directories of women's organisations and initiatives in Poland list over 300 such entities. Apart from the newly established ones, some organisations formed many years ago, such as The Women's League or The Farmer's Wives' Association still continue their activities. It is obviously not possible to describe the whole variety of women's groups, movements and initiatives in such a short text. It is also difficult to provide their overall characteristics. One of the greatest advantages of women's movements in Poland is their diversity. Women's organizations include associations, federations, clubs and foundations. They comprise feminist, professional and religious movements, sections of political parties, charities, groups formed at universities as well as Polish branches of international women's groups.

One of the criteria for dividing the women's groups in today's Poland may be their main purpose and the audience they wish to address. An analysis based on those criteria shows that the organisations come to life in spheres where a women-related problem has been noticed and defined by women. Our legacy of the communist times is the low level of female participation in power structures. After 1989, the proportion of women in the parliament has become even smaller. As a reaction to this, various initiatives

and organizations have appeared whose aim is to increase the participation of women in exercising power. Differences in pay between men and women existed before 1989 and have not diminished in the later periods. After 1989 a new problem has become apparent, one that affects women to a greater extent than men, namely unemployment. In reaction to that set of problems, organisations and initiatives have been formed that are active in the area of female employment. The change of law that has made access to abortion much more difficult, has led to the establishment of organisations offering help in family planning and contraception as well as in ensuring access to the procedure. Disclosing of the phenomenon and launching a debate on violence against women has led to the creation of help and advisory centres as well as shelters for women with children who have fallen victim to family violence. The fact that old regulations act to the disadvantage of women in the new socio-economic situation and the trend showing that a lot of provisions are interpreted to the disadvantage of women while the enforcing of favourable regulations is extremely difficult, has led to the emergence of organisations that protect women's rights, monitor and analyse legal provisions and draft new legal regulations safeguarding the equal status of men and women (Fuszara 2006).

Apart from differences in objectives and audiences, women's groups also differ in the level of formality and organisational structure. Debates whether to formalise the activities have, since the beginning of the democratic transformation, accompanied that part of the movement that identifies itself with feminism. Generally, the feminist movement, in principle acting either against or outside patriarchal structures, has found it difficult to come to terms with the fact that for various reasons, mostly pragmatic ones, they have to act within formal structures. Over time, some groups have appeared that have totally rejected any formalism (such as the anarcho-feminist groups or groups that organize feminist demonstrations - "manifas" – on 8 March every year). The latter, because of their informal character, instability of structures, lack of formal membership and authorities, may be included in the category of groups following the paradigm of new social movements.

Another criterion to differentiate between various women's organisations may be their strategy. In Poland, they usually refer to an equality strategy. It is related to the traditional women's liberation movement, encompassed in the trend described as liberal feminism. Liberal feminism is, in turn, treated as one of the trends referred to as similarity-based feminism – according to which differences between men and women are primarily of social making and men and women are more similar to each other than different from each other. The equality strategy is supposed to lead, first of all, to achieving social and legal equality of both sexes.

Other strategies will be adopted by groups opting for a difference-based feminism. Strategies employed by such groups include emphasising differences and a demand that the differences be taken into account. In Poland, women's organisations rarely invoke this strategy, one of the few exceptions being the "done-and-paid for" movement, which demands remuneration for women for the housework they do.

Recently, there have appeared organisations and initiatives appealing to religious beliefs or linked with the church by their organizational structure. Their statutes, programme declarations and reports they prepare indicate that these organisations promote a traditional vision of the role of a woman in society.

A division into organisations linked with a church (especially the Roman-Catholic church) and those not linked with any, is the deepest division to be noted in the Polish women's movement. The clearest manifestations of that division were the preparations to the 1995 UN Conference on women's issues in Beijing. Two "shadow reports" prepared by non-governmental organizations and 300 thousand signatures collected by Catholic organisations in protest against both the government's and NGOs' reports, show that the split between the organisations linked with the Catholic church and women's organisations not linked with it is extremely significant and offers no chance of reconciliation. There is no communication between these two communities. Organizations that signed the "Catholic" report included primarily pro-life organisations, whom feminist organisations question their right to call themselves women's organisations – if not for any other reason, often because they are managed mainly by men. It is, however, not possible to resolve the dispute whether we are dealing here with "misappropriation" of the concept and area of activity by non-women's organisations or with differences of a fundamental nature among women's organizations.

Activities of organisations linked with the Catholic church, especially pro-life movements, are perceived by feminists as anti-feminist or counter-feminist. Discussion on this subject, although less publicly known and yet very important for individual people, is continuing in the forums such as the Internet gender platforms and deals primarily with the issue of possibility to combine "Catholicism" with "feminism" – the main bone of contention being the question of choice in relation to reproductive rights and the problem whether one can be a feminist while at the same time agreeing with the teachings of the church in that area.

The year 2009 has proved to be very difficult for the women's movement in Poland. The twentieth anniversary of the democratic changes in Poland, has become an opportunity to organise the Women's Congress, by women and for women only. The Congress has brought together about 5000 representatives of very different groups. Side by side with activists

from non-governmental organizations sat professors, female politicians, businesswomen, actresses, film directors, women representing trade unions and local authorities, journalists, writers, teachers, doctors, representatives of all professions and ages, coming both from big cities and small towns or villages. Individual thematic panels have formulated their demands, sometimes very detailed ones. It can be stated that for the first time, a reform programme has been prepared in a "bottom-up" manner and proposed only by women. One of the main demands has been for the introduction of a gender parity system in Poland. Currently (Autumn 2009) signatures are being collected under the draft bill to be submitted to Parliament.

Conclusion

The situation of women in Poland after the transformation of 1989 may be described in two ways: pessimistic and optimistic. In the pessimistic description we will draw attention to the low representation of women in the parliament, to the high unemployment rate among women, to differences in pay to the detriment of women. In this pessimistic perspective, the indicators will be emphasised that point to the fact that the situation of women is getting worse: to the decreasing percentage of women in the parliament (because of the lower number of women in the Senate) and to the lack of activity of the Parliamentary Women's Group, to limiting the reproductive rights of women, to unemployment and lower pay among women, to the façade character of institutions responsible for gender equality, to the hostile atmosphere surrounding a number of initiatives aimed at making the opportunities of men and women equal. The fundamental changes in the labour market have resulted in a situation in which former regulations safeguarding women's rights no longer protect those rights and may in fact cause opposite effects. Whereas new regulations, good for women and promoting their interests, stand no chance of being implemented, as the experience has shown to date, because of, among other things, the lack of political will accompanied by the low representation of women who are unable to have the appropriate changes made.

However, a more optimistic picture can also be drawn. All the above mentioned elements, because of which the changes in Poland have not brought an unequivocal victory for women, are true and their importance cannot be denied. On the other hand, nowadays, women in Poland acquire education on a mass scale and have already outstripped men in this respect. In Poland, as compared to other countries, women comprise a significant percentage of people running their own business. Another great achievement have been the various possibilities of self-organisation available for women – women do not only start women's organizations but they are also numerous

and effective in other segments of the non-governmental sector. There are not too many women at the highest levels of government, but at the lower levels, that is, at levels where political parties have practically no chance in elections (Kurczewski 2009)[2], there are many more women present. We have flourishing municipalities with the majority of women in local authorities. Public opinion surveys show that even though not all politicians are particularly favourably inclined towards mechanisms ensuring equal chances, the attitude of the public is much more favourable to those ideas (in a 2009 survey, the quota system has been supported by over 50% of men and over 70% of women). Every year brings more people declaring their support for partnership-based relations and equality. The optimistic view seems to suggest that these are the symptoms of the coming changes that will lead to gender equality.

Bibliography

Domański, Henryk (1992): Zadowolony niewolnik. IFiS PAN, Warsaw

Fuszara, Małgorzata (2005): *Between Feminism and the Catholic Church: The Women's Movement in Poland* in: Czech Sociological Review, No. 5, 2005, pp. 1057-1075

Fuszara, Małgorzata (2006): Kobiety w polityce. Trio, Warsaw

Fuszara, Małgorzata; Spurek, Sylwia (2007): *Rządy i uczestnictwo*, in: Polityka równości płci. Polska 2007, pp. 24-34, Warsaw, UNDP, 2007

Fuszara, Małgorzata (2008): Równe szanse czy bariery? Kobiety w parlamencie Polski i Macedonii. Societas/Communitas, no. 6 (volume: „Kobiety, mężczyźni, płeć", edited by M. Fuszara and B. Łaciak)

Kurczewski, Jacek, (2002): *Równouprawnienie płciowe reprezentacji w opinii parlamentarzystów*, in: M. Fuszara (ed) Kobiety w Polsce na przełomie wieków. Nowy kontrakt płci? Institute of Public Affairs, Warsaw

Kurczewski, Jacek (2009) Ścieżki emancypacji. TRIO. Warsaw

Siemieńska, Renata (1990): Płeć – zawód-polityka. Kobiety w życiu publicznym w Polsce. Warsaw, Warsaw University, Institute of Sociology

Zielińska, Eleonora (2002)*: Sytuacja kobiet w Polsce w świetle zmian legislacyjnych okresu transformacji*, in: M. Fuszara (ed) Kobiety w Polsce na przełomie wieków. Nowy kontrakt płci? Institute of Public Affairs, Warsaw.

[2] "In the councils of municipalities, cities with poviat rights and districts of Warsaw, the victory of local committees over political parties was overwhelming, as they won 72% of seats, whereas the political party most popular at the local level PSL – 10%, PiS – 8%, PO – 4%, Lewica i Demokraci [the Left and the Democracts] 3% (…)" J. Kurczewski 2009 pp. 137

Paweł Swianiewicz

Local democracy

Local democracy take-off – 1990 decentralization reforms

Prior to 1990 the highly centralist doctrine of real-socialism had left no space for local self-government. Local administration was hierarchically dependent on upper tiers and branch ministries of the central government and local discretion to decide on any financial issues or on the forms of services delivery was next to none. The constitutionally dominant position of the communist party limited any reforms aimed at real democratisation of the local political process. Nevertheless the inefficiency of the centralist system had been widely apparent for many years. The Polish Communist Party tried to introduce some forms of decentralisation and local government (see Acts of 1983 and 1988). But these limited reforms did not change the doctrinal base of the centralist state, thus they could hardly result in a more democratic or an effective local government.

The turning point was the round-table negotiations (between the "Solidarity" opposition and the ruling communist party) in 1989. Local government reform was one of topics of discussion. It is worth emphasising that it was the only topic where a final agreement was not reached and a "statement of disagreement" was signed. Nevertheless, the main directions of future reform had been already drawn up by the "Solidarity" opposition. The re-birth of sub-national democracy was one of priorities of the first non-communist government after the Second World War formed in September 1989. Rapid decentralization reforms were expected to bring about a replacement of local elites and minimize the danger that state reforms would be sabotaged by a local post-communist *nomenclature*. Quick but intense preparations of the reforms resulted in the adoption of the

Local Government Act on 8 March 1990 followed by democratic elections to municipal (*gmina*) governments in May 1990.

The reform has created a somewhat idealist picture *in which local self-government was to be the incarnation of civil society and everything that the old regime was not* (Campbell & Coulson 2006). As earlier in Spain or Portugal, centralization was identified by reformers with totalitarianism and decentralization with democratization. The 1990 reform introduced elected local government on the municipal level only, while upper tiers of territorial (provincial) divisions remained managed by the state administration.

Milestones of the reform and a brief overview of the present institutional system

Decentralization reform in Poland has been a process rather than a single event. The most important milestones of this process include following moments:

- The introduction of democratic local government on a municipal (*gmina*) level in 1990, followed by the financial reform in 1991. Municipalities have become responsible for several services including pre-school education, local sport and culture, several responsibilities related to social care, communal housing, local infrastructure services such as water provision, sewage treatment, solid waste management, street lighting, local roads maintenance, local public transport etc.
- 1994 – the granting of extended functions to big cities (over 100,000 citizens) including: secondary education, health care, main roads in these cities, social welfare.
- 1996 – the taking-over of responsibility for primary schools (including teachers' salaries, appointment of school directors etc.). This function is the single most important item in the municipal budget (in small, rural local governments often more than half of current expenditures).
- 1998/1999 – the so called second wave of decentralization reform, introducing local governments on county (*powiat*) and regional (*województwo*) tiers. The main functions of counties include secondary education, management of health care[1], social welfare services and county roads. Regions are responsible for regional roads and railway networks as well as for regional hospitals, but their main function rests in strategic planning for regional development rather than in direct service

[1] Local governments are responsible for maintenance and management of health care infrastructure, while the operating costs are financed separately by the health insurance system.

delivery. The current sub-national government system consists of three tiers with 16 regions, 315 counties (plus 65 cities of county status) and close to 2500 municipalities.

- 2002 – the introduction of the appointment of municipal mayors by direct election together with the introduction of a strong mayoral system. Executive power on county and regional tiers still belongs to collective boards nominated by the council.
- 2004-2007 – the "creeping decentralization" of regional policies through gradual extension of the elected regional government's role in the managing of EU structural funds. Following EU accession in 2004, in the 2004-2006 period structural funds were managed through one Integrated Regional Operating Programme, which was designed on a central level, and the power of implementation was divided between regional government and the state-appointed regional governor. In the 2007-2013 perspective each of regions negotiates its own Regional Operating Programme, and, after a short period of "veto power" for the governor, the regional government is now fully autonomous in implementation of the programme (including the selection of projects to be financed). Poland is the only of the new member states, which has elected government on NUTS-2 level (which is the most important level of EU regional policies implementation) and in which basic decisions on regional programmes design and implementation are made by elected sub-national governments.

The municipal (*gmina*) tier remains not only the oldest, but also the most important tier of sub-national jurisdictions. It is the only one which is protected in the Polish constitution, whereas the existence of both county and regional tiers depends on the will of the Parliament. *The municipality* is also responsible for the highest share of decentralized functions. The aggregate *municipality* budget is equal to close to 75% of all decentralized spending (at the same time counties spend about 15% and regions less than 10% of sub-national public budgets). However the political role of regional governments is much larger than it seems to be on the basis of their financial power, it originates from its role in the creation of regional strategies and decision making powers related to EU funds allocation. It is important to mention that EU grants are responsible for close to 30% of total sub-national public investments. The protection of local governments' autonomy originates also from the European Charter of Local Self-governments of the Council of Europe, which was ratified by Poland in 1992 and the Polish Constitution of 1997, which repeats many formulations from the European Charter. According to the Constitution, the Prime Minister is responsible for the supervision of local governments, but this function is exercised

through regional governors (*wojewoda*), and (on financial issues) by special Regional Chambers of Accounts (RCAs - *Regionalne Izby Obrachunkowe*). This supervision is limited to checking if local decisions comply with national legislation. Every resolution of the council is sent either to the governor or to the RCA, who may invalidate it if it violates the law. In case of disagreement local governments may appeal to the Administrative Court, which makes a final decision. Local governments, through their associations, may also appeal to the Constitutional Court if they think that national legislation does not comply with the Constitution with regard to local issues.

The main mode of interaction between central and sub-national governments is through the Joint Central-Local Governments Committee (*Komisja Wspólna Rządu i Samorządu Terytorialnego*). Local governments are represented there by their associations, namely:

- Association of Polish Regions
- Association of Polish Counties
- Union of Polish Metropolises (12 major cities)
- Association of Polish Cities
- Union of Small Towns
- Association of Polish Rural Local Governments

In theory, every draft law which affects local governments should be discussed by the Joint Committee before it is sent to Parliament, but this requirement is not always fulfilled. However, the lobbying of local governments through the Joint Committee has been effective on many occasions, and this is one of the instruments through which local government has become a powerful actor on the national political scene.

The shape of local democracy

Local elections

Local elections are organized every four years and the authorities in each of three sub-national tiers are elected on the same day. In the case of regions and counties there are councils elected according to a proportional system, with from 3 to 15 councillors elected in each of the wards. The system of municipal elections is more complex. There are two distinct systems to elect the council: majoritarian in local governments with less than 20,000 residents (usually with one councillor elected in each of the wards) and proportional in the larger local jurisdictions.

The turn-out in local elections is usually low and since the 1990 reform has never been higher than 50% (see Table 1). It is usually a few points

lower than in the closest national elections (comparison of turn out in 2005 and 2006 is the only exception to this rule), however in general, interest in elections is not very high in Poland.

Table 1. Turn out in Polish local elections since 1990

Year	Turn out in local elections	Turn-out in closest Parliamentary elections
1990	42%	62% (1989)
1994	33%	51% (1993)
1998	47%	48% (1997)
2002	44%	46% (2001)
2006	46%	41% (2005) 54% (2007)

Source: own calculations, based on Central Electoral Committee data (www.pkw.gov.pl)

Turn-out in local elections is usually higher in small local governments (which is opposite to the variation of turn-out in national elections), in which there are more direct links between elected representatives and voters, than in big cities. Typically, in small towns and rural areas turn-out in local elections is higher than in national elections, while in the big towns the relationship is the opposite. This relationship is illustrated on figure 1.

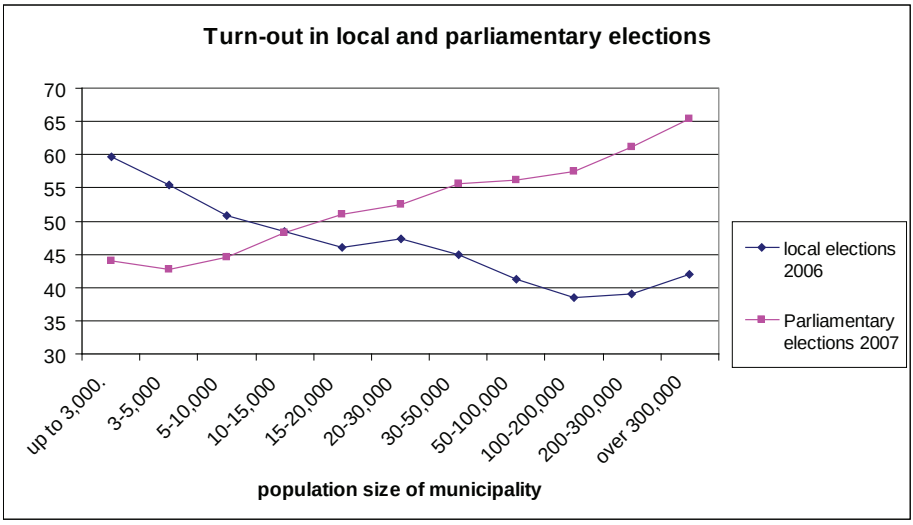


Fig. 1.

Direct elections of mayors and de-politicization of local politics

The introduction of direct elections for the appointment of mayors in 2002 may be seen as an element of the more general trend of personalization of politics, which has been identified in several countries (see for example the concept of New Political Culture – Clark, Hoffmann-Martinot 1998). There were four major arguments for the reform:

- Direct election makes local politics more clear for citizens and that should result in more active involvement of voters in local public issues. In particular, it was expected that the change would result in higher electoral turn-out. Empirical data do not support this expectation, and a similar discouraging conclusion concerns not only Poland but also other European countries introducing similar reforms;
- Appointment by direct election should increase accountability of mayors towards local public opinion. This claim is perhaps the most difficult for empirical verification and the opinions of experts vary.
- The reform would strengthen the power of executive organs of local governments, which would increase effectiveness of policy implementation. This argument referred indirectly to New Public Management ideas as well as to empirical observation of weak and unstable city boards before 2002. Results of the research confirm that the position of mayors has significantly strengthened as a result of the reform, although experts differ in the opinions if this change has been positive.
- The reform would strengthen citizens' influence on the results of the election, while decrease the role of established political parties. Empirical data indeed confirm that the presence of national political parties has decreased significantly after the reform.

The last argument is especially interesting. Since it refers to the perhaps the most distinct characteristic of the Polish local government system. Polish local governments are perhaps the least partisan among all European countries; most of councillors and mayors have been elected as independent, or from the lists of local committees not formally connected to national political parties[2]. The quantitative illustration of this claim is presented on figures 2 and 3.

[2] This rule concerns municipal and county tiers, while regional governments are dominated by political parties to the extent similar to national political scene.

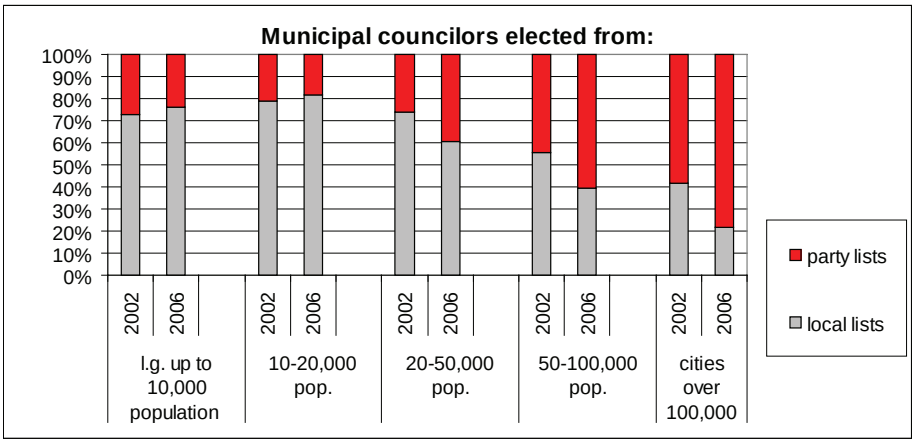


Fig. 2.

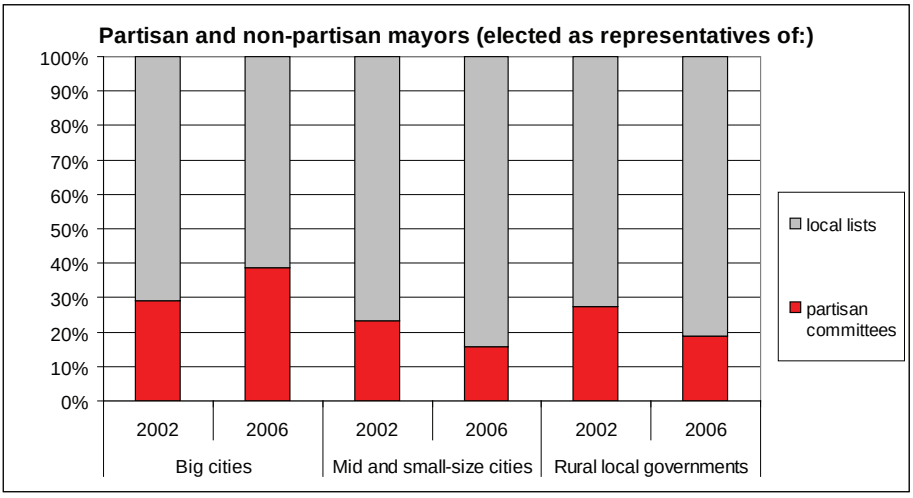


Fig. 3.

What are the reasons for this specific situation? The phenomenon is rooted on the one hand in the institutional weakness of the main political parties (this is illustrated by one of the lowest membership to voters ratios in Europe) and on the other by the popular distrust towards parties motivated both by the legacy of party role under the communist period and by the general perception of the poor performance of parties after 1989 political turn-over. Finally, it has been all strengthened by the dominant ideology of the Polish local government reform which was anti-partisan. A typical slogan used by many reformers but also by local leaders is that "a hole in the bridge

is not a political issue." This supposes that the issues local governments deal with are politically neutral or "objective" and do not leave much space for partisan or ideological debate. This is a vision of local government which is a technocratic rather than a political institution, and it is very characteristic that numerous elected officials – councillors and mayors refuse to be labelled politicians; they see themselves as rather managers (in case of mayors) or as similar to NGO activists (in case of councillors). The following opinion of Jerzy Regulski – one of the main "founding fathers" of the contemporary Polish local governments system – is very telling in this respect:

*Groups of citizens have different interests and priorities… Those interests should be articulated, so proper decisions can be made by local authorities… This should be role of local civic organizations, rather than of national political parties, who are inclined to use local issues for their political struggle for power, but who are usually not interested in solving these local problems (*Regulski 2005, p. 104-105[3])

This way of thinking is followed by numerous local politicians (who by the way hate to be called "politicians"):

Interests that I see around are not partisan. They are… either territorial or corporate. Cabmen have their interests, bakers have theirs, residents of the Beyzyma Street have theirs. And these interests are independent of whether you belong to SLD, PO, PiS or to another political party. That is city life (R. Dutkiewicz – mayor of Wrocław – 650,000 population, quoted after Gendźwiłł 2009).

The decade of the 1990s suggested that political parties were gradually conquering local governments. Several observers expected that after the new map of parties had crystallized, they would gain most of the positions in local politics. But the last decade, especially after the 2002 reform of mayoral elections, has changed this perspective – the share of non-partisan local politicians has started to grow again. The phenomenon of non-partisan councillors and mayors has several faces. In big cities the dominant face is a "leader's supporters committee", groups of candidates to local council, who are organized around a popular, charismatic local mayor. In smaller municipalities there are more "real independents" as well as small local organizations participating in local elections. An interesting typology of non-partisan local politicians has been developed by Kurczewski (2007). But the phenomenon of the low position of national parties in local governments seems to be more permanent than temporary characteristics of the Polish system.

[3] Translation by Paweł Swianiewicz.

Public perception of local governments in Poland

The attitude of local communities and individual citizens to local government is complex; it includes negative and positive elements and might be summarized as "sympathetic disengagement". On the one hand the level of trust in local governments is much higher and much more stable than in case of the central government or parliament (see figure 4). On the other hand, the level of interest in local public issues is not very high, as illustrated by the low turn-out in local elections (see table 1 above).

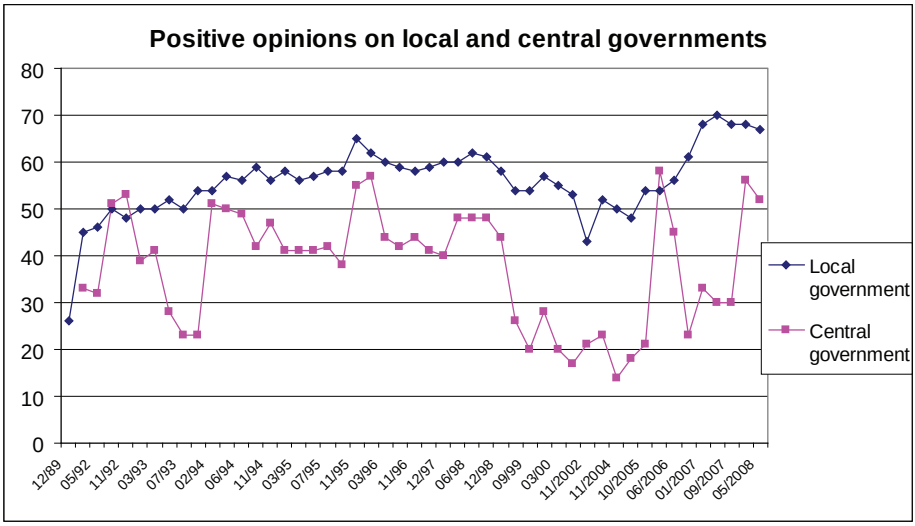


Fig. 4.

The general opinion on the functioning of local democracy is gradually improving, which is illustrated by the increasing proportion of respondents, who think that they can influence public affairs in their municipality (cf. fig 5). But at the same time, a considerable proportion of public opinion thinks that local governments are corrupt (although, in these cases general opinion on local authorities is better than towards central government administration).

Another weak point is the weak mechanism facilitating participatory democracy. Communication with local community is often treated as a one-way street, i.e. informing citizens about plans and activities of the local authorities. The mechanisms of consultation or support for bottom-up local initiatives are much weaker, although we may find some examples of innovative local governments. The picture may be completed by insufficient cooperation of many local governments with non governmental organizations.

Most of local governments had not yet started to prepare programmes of co-operation with NGOs before it became imposed by the national legislation, and, even now, such programmes are fictitious in several cases.

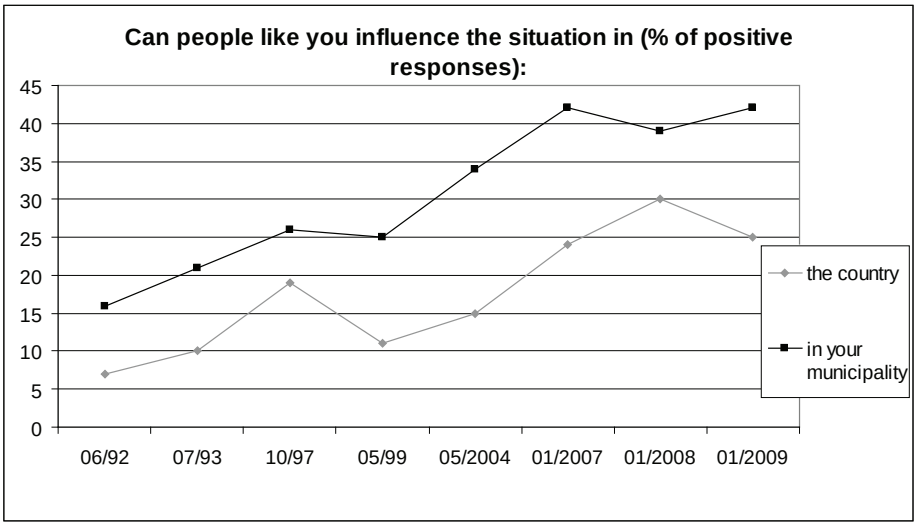


Fig. 5.

Local democracy and decentralization in policy of Polish central governments after 1990

For most of the period after 1990 decentralization reforms have been seen as a success, and this direction of reforms was at least verbally supported by central governments and most of the media. In fact, the actual attitudes of central governments were more difficult to classify. There is no doubt that two governments – of Prime Minister Tadeusz Mazowiecki in 1990 and of Jerzy Buzek in 1998 – who introduced major steps of decentralization reforms may be seen as governments who have strengthened local governments. In the case of other central governments it is less clear, it is enough to mention delays of the planned transferring of responsibility for primary schools to local governments in 1994 (the original data was delayed till 1996) or examples of reducing powers (competencies) of municipal and county governments. Two the most recent central governments provide a good example of different discourse on decentralization issues. The Law and Justice (PiS) government under the leadership of Jarosław Kaczyński (2005-2007) provides an example of the lack of trust towards decentralized institutions. An ambivalent attitude towards strengthening regional governments (including attempts at introducing of veto power

for government appointed governors in case of decisions on allocation of structural funds), changes in local electoral law which were subordinated to the logic of political games at a central level, or the suggestion to limit the number of terms the mayor may serve in his/her office are just examples of this attitude. The change of government to Civic Platform (PO) led in 2007 marked also a change of the language of the decentralization discourse. The new government made further decentralization (including promises of enlarged competencies for regional governments) one of the flagships of its political agenda. Another thing is that these widely announced plans found little confirmation in actual legislative changes over the subsequent two years, but at least the language has changed significantly to one more favourable towards decentralization.

Conclusions

"Sympathetic disengagement" may be seen as one of the main threats for local democracy in Poland. It reflects the weakness of civic society, which has a negative impact on social control over local authorities. One may indicate examples of local communities in which two interrelated phenomena: (i) weak civic society and (ii) a lack of real competition of alternative elites, led to the domination of one strong leader, and development of closed, clientelist-type of networks among local political elites. In such a context the stabilization of local elites (quickly growing rates of re-elections of mayors and councillors), visible especially in 2006 local elections, might be in some cases interpreted as a negative phenomenon. In that context the suggestion to limit the number of terms a mayor can serve in the office (as discussed in the previous section) is not necessarily a bad solution, since it may provide a barrier for development of such self-sustaining clientelist networks.

The issue has been realized by some local leaders. Paweł Adamowicz – mayor of Gdańsk city – has written recently: "The Polish model of local government has to enter a new phase. Representative democracy needs to be strengthened by deliberative democracy" ("Chcemy aby społeczeństwo…", 2008, p. 22).

According to numerous experts decentralization reforms was one of the most successful elements of the Polish transformation. On the other hand its further prospects depend on to what extent local governments will be able to cope with the negative phenomena described above.

There is no doubt that Polish local governments are important elements of the Polish political system. They are responsible for over 40% of budget spending, provide several important services of an (usually) acceptable

quality. It is worth emphasising that the value of property transferred to local governments, as well as discretion of local fiscal policies, are in Poland larger than in any other countries of Central and Eastern Europe. It is also the only country among new EU member states, in which elected regional government plays an important role in programming and implementation of projects funded by structural funds.

Local governments are also important elements of the democratic system. The politics on a regional level is dominated by national parties not much different from the mechanisms observed on a central level. But the nature of local politics is different. One important difference is the low significance of party politics. Another, perhaps even more important, is the relatively high level of trust and feeling of influence on local public issues.

It seems that relatively strong position of local governments is important for the functioning of the country as a whole. Relative autonomy and diversified political orientation of local authorities in individual cities and regions immune to some extent from consequences of wrong decisions made on a central level. The same observation may be applied to the role of regions in EU funds absorption; mistakes are significant for the region, but they do not have an impact on the rest of the country.

It all does not mean that the picture of local democracy is perfect. Cases of corruption or clientelist networks are part of the same reality. However, social control over the operation of local authorities, although far from being perfect, is perhaps still better than control over state administration. In that sense, Poland with weaker local governments would be a weaker democracy. Dealing with the problems mentioned above certainly requires strong civic society. In terms of policies what is required is time and patient support for building local civic institutions, it is perhaps more important than potential institutional reforms of the local government system itself.

References

„Chcemy aby społeczeństwo współdecydowało" z prezydentem Gdańska P. Adamowiczem rozmawia L. Szmitke, *Pomorski Przegląd Gospodarczy*, nr 2/2008 (37).

Clark T.N., Hoffmann-Martinot V. (eds.) (1998) *The New Political Culture*, Boulder, Colorado: Westview.

Campbell A. and Coulson A. (2006) 'Into the Mainstream: Local Democracy in Central and Eastern Europe', *Local Government Studies*,. Vol. 32, No. 5, pp. 543-61.

Gendźwiłł, A. (2009) *Bezpartyjni prezydenci miast i ich znaczenie dla lokalnej polityki*, Warszawa: MA dissertation, Institute of Sociology, University of Warsaw.

Kurczewski J. (2007) *Lokalne wzory kultury politycznej*, Warszawa: Trio.

Regulski, J. (2005) *Samorządna Polska*, Warszawa: Rosner i Wspólnicy.

Grzegorz Makowski

Civil society in Poland – challenges and prospects[1]

The condition of civil society in Poland leaves a lot to be desired. Poles are not very active and are not very involved in activities oriented towards cooperation and working for the common good. Polish non-governmental organizations, that is, the institutionalised part of the civil society, not only are unable to overcome the traditional problems of insufficient funds but are getting more and more detached from their social base, casting themselves in the role of contractors performing tasks commissioned by the public administration. In order to improve this situation, what is needed first of all, is the development of a coherent state policy addressing the problems of civil society. At the same time, some of the problems may be ameliorated by supporting civic education, creating a friendly legal and institutional environment for non-governmental organisations and by implementing the idea of civic dialogue.

Historical factors and the current situation: Two paradoxes of Polish civil society

While taking into account research results and conclusions from various analyses, and from watching the changes that have been taking place

[1] This text has been prepared thanks to the KOMPAS Project implemented since 2003 by the Institute of Public Affairs. The goal of the project is to act towards building a friendly institutional and legal environment for non-governmental organisations. The most important component of the Project is the systematic monitoring of legal developments (changes, new legal initiatives, problems with the operation of existing institutions and regulations). The article has been written on the basis of information and experience gathered as a result of such monitoring activities.

in recent years in the area of public activity of Poles, one can formulate a thesis that the condition of modern civil society in Poland and its future are determined by two paradoxes. The first one is of a strictly historical nature.

The communist state distorted the idea of common good and deprived people of instruments thanks to which they could freely provide for the common good. However, civil society did not totally disappear during this time. It functioned within a rump form of organisations either formed or tolerated by the regime. At the same time, it existed also in the form of an underground social movement gathered mainly around the "Solidarity" trade union. The most active citizens, working there, did not have any legal basis for their actions and therefore could not freely influence the shape of public life. And yet, it was thanks to such an "illegal civil society" that the communist regime eventually collapsed[2].

At the moment of the fall of the Soviet Bloc, it was clear that in the new situation it was not only necessary to sustain this civic spirit, but also to take care of the institutional framework for the community activities. A milestone in the modern history of the development of Polish civil society was the establishment of the Civil Committees in June 1989, which channelled the spontaneous movements determined to continue system changes. It was thanks to them that activists in the anti-communist opposition won the first free elections in 50 years and could provide a stimulus to the further institutionalisation of civil society. One of the first acts adopted by the parliament elected in the June 1989 elections was the Act: Law on Associations[3]. In spite of its numerous faults, it did enable the registration of over 23 thousand associations within the first three years following its adoption. Further transformation meant progressive institutionalisation of civil society.

The year 1997, with the adoption of a new Constitution, constituted another milestone in the development of civil society in contemporary Poland. First of all, the new constitutional law ultimately guaranteed the freedom to form and to operate with respect to all civil organisations, thus empowering civil society. In addition, it introduced the principle of

[2] The "illegal" civil society has been the subject of works by various authors, including Jan Kubik (see. Jan Kubik, Between the State and Network of Cousins: The Role of Civil Society and Non-civil Associations in the Democratization of Poland, [in:] Nancy Gina Bermeo, Philip G. Nord, Civil society before democracy: lessons from nineteenth-century Europe, Rowman & Littlefield Publishers, Inc. Oxford, pp. 184-195. The issue has been analysed in a similar way by Kazimierz Sowa (see. Kazimierz Z. Sowa, Społeczeństwo obywatelskie a polityka – uwagi o historycznych uwarunkowaniach i perspektywach społeczeństwa obywatelskiego w Polsce, Trzeci sektor no. 11, 2007)

[3] See Grzegorz Makowski, Trzy najważniejsze wydarzenia prawne dwudziestolecia, Gazeta NGO.pl, May 2009.

subsidiarity as a systemic rule, thus emphasising the fact that Poland is a country in which the primary importance is attached to the individual and the communities closest to him or her – family, neighbourhood and voluntary associations of citizens, whereas the role of the state is there to support them.

The year 2003 – adoption of the Act on Public Benefit and Voluntary Activity (referred to as the Act on Public Benefit)[4]. This legal act, described by some as "the constitution of non-governmental organisations", and strongly criticised by others, regardless of its final assessment, is an indicator of a further stage of the civil society development. On the one hand, the act, whose aim has been to make the above mentioned subsidiarity principle operational, definitely strengthened the position of non-governmental organizations, that is, the institutionalised part of the civil society. On the other hand, however, an analysis of the functioning of that act allows us to state that it is the best example of a certain general direction in which the civil society in Poland has been evolving over the last 20 years[5]. Deviating from the idea of a spontaneous, grass-roots movement, channelling activity and interests, the civil society has been consolidating in the form of a group of entities (called the third sector) whose main *modus operandi* is simply cooperation with the state. What is more, it seems that the operation of the Act on Public Benefit has cast non-governmental organisations not even in the role of partners to the state but, primarily, in the role of its contractors. And here we arrive at the second paradox.

It turns out that contemporary Polish civil society, whose existence is no longer questioned by the state, and which is, to a great extent, institutionalised, rich in legal forms, is also at the same time inherently weak because it is not able to fulfil its basic functions effectively – namely, to channel social interests, to make citizens active and to build local communities. The evidence confirming that, albeit indirect, can be easily found in the results of public opinion surveys.

Firstly, the situation of non-governmental organisations is worse that we could expect after 20 years of democratic transformation. In 2008, approx. 63 thousand associations and over 9.5 thousand foundations were registered. It is not a great number for a country with the population of almost 40 million. In addition, that number should be reduced by those organisations which, even though present in the registry, do not carry out any activity or their activity is of a sporadic nature (it is estimated that they

[4] Ibidem

[5] Grzegorz Makowski (ed.), Pięć lat ustawy o działalności pożytku publicznego i o wolontariacie, Institute of Public Affairs, Warsaw 2008

can account for as much as 40 percent of all registered entities[6]). But even those which do exist and are relatively active, still remain in a poor financial condition. The majority of funds at the disposal of average non-governmental organizations are public funds. That combined with the still poor cooperative culture is the reason why these organisations play a role principally of contractors, implementing public tasks, thus losing their civic character[7].

And there are other consequences also to be considered

Non-governmental organisations perceived as entities that have no real influence in solving the problems of the country or local communities[8]. They are not recognized as centres representing local communities or public interests. Public confidence in this third sector is weak. In a CBOS survey of 2006 only 7 percent of Poles declared that they trust non-governmental organisations[9].

There is an interrelationship between the rather imperfect condition of non-governmental organisations and the general condition of civil society[10]. The weakness of this third sector is both a result of and one of the symptoms of low civic participation. Poles are not very willing to form associations and to act in any organised form. The results of the 2006 European Social Survey showed that just over 13 percent of respondents declare that within the past 12 months they were involved in the activities of a charitable or voluntary organisation (in comparison, the same figure for Norway was almost 77 percent). From the same data we learn that only 22 percent of respondents participated in any organised local activity (in Austria that indicator was over 65 percent in comparison)[11]. The ESS study results are confirmed by the results of *Diagnoza 2009* [2009 Diagnosis] showing that only 13 percent of Poles admit that they belong to any civil society organisation (including, for instance, school parents' committees), and only 15 percent declare that

[6] M. Gumkowska, NGOs: ile zarejestrowanych, a ile aktywnych, http://wiadomosci.ngo.pl/wiadomosci/432177.html (seen on 25.02.2009.)

[7] Grzegorz Makowski (ed.), Pięć lat ustawy o działalności pożytku publicznego i o wolontariacie, Institute of Public Affairs, Warsaw 2008

[8] In the 2007 survey of KLON/JAWOR, only 26 percent of respondents stated that organisations are able to solve important problems of local community

[9] CBOS, Zaufanie do rządu, przedsiębiorstw, ONZ i organizacji pozarządowych w 20 krajach świata. Research announcement,, Warsaw, January 2009

[10] In analysing this issue the author has used a previously prepared text: Grzegorz Makowski, Zmiana czy stagnacja? Polityka państwa wobec organizacji pozarządowych po wyborach w 2007 roku, [in:] Lena Kolarska-Bobińska, Jacek Kucharczyk, Demokracja w Polce 2007-2009, Institute of Public Affairs, Warsaw 2009

[11] Access to source data of the European Social Survey http://nesstar.ess.nsd.uib.no

within the last 12 months they have undertaken any action for the benefit of their community[12]. The poor involvement of citizens in actions for the public good is also reflected in studies concerning philanthropic conduct. A 2007 CBOS survey shows that 44 percent of Poles are willing to give money or material donations to charity but only less than one third of them actually do it[13]. The most recent study by KLON/JAWOR shows, however that in 2009 a little over 50 percent of adult Poles supported a certain community or organization financially or materially. But if we deduct from that number those who once a year donate money to a public collection organised by Wielka Orkiestra Świątecznej Pomocy [The Great Orchestra of Christmas Charity], the number of donors shrinks to only 19 percent[14]. These figures show that Polish philanthropy is of a rather occasional character and it would be difficult to call it an established habit. Other data shows that the relatively rare philanthropic acts are not exceedingly generous. That is why the income of non-governmental organizations from donations is not a significant source of funding for their activities[15].

The gap between non-governmental organisations and society seems to be growing. Citizens cannot see any great need for supporting such organizations, for any special involvement in their activities, or for forming any new entities. The far from perfect situation of the non-governmental sector and the fact that the sector is not firmly rooted within the society, all act as a litmus test reflecting the general condition of the civil society. After 20 years of democratic transformation, it has turned out that the "legal" institutionalised civil society is not able to perform its basic functions, which the "illegal" civil society of the communist times did so well. This is in spite of the fact that the need for civic activity, as it is this function that we have in mind, is growing and not diminishing.

Concluding this part of the discussion, it may be stated that, observing the development of civil society after 1989 with the benefit of hindsight, we can identify the third paradox. In order to develop properly, civil society needs friendly assistance from the state, which must have a multifaceted long-term policy regarding its problems. The lack of such initiatives (which

---

[12] See Janusz Czapiński, Tomasz Panek (ed.), Diagnoza społeczna 2007. Warunki i jakość życia Polaków, Social Monitoring Board, Warsaw 2007, p. 30 and Diagnoza Społeczna 2009. Warunki i jakość życia Polaków. Press release, 15.07.2009.

[13] Barbara Wciórka, Społeczeństwo obywatelskie 1998-2008, Opinie i diagnozy no. 8, CBOS, Warsaw 2008

[14] Association KLON/JAWOR, Czy Polacy są filantropami?, source: http://wiadomosci.ngo.pl/wiadomosci/505405.html?from=rss (seen: 5.01.2010 r.)

[15] Agata Gumkowska, Jan Herbst, Podstawowe fakty o organizacjach pozarządowych… p. 42

indeed has been characteristic for all cabinets in power after 1989) is one of the main barriers towards the development of democracy in Poland[16].

The main challenges for the development of civil society in 2010 Poland

The strategy and again the strategy

Both experts and non-governmental activists in Poland have, for quite some time now, been proposing the creation of a national strategy for the development of civil society. Research results show not only an unsatisfactory condition of that sphere of public life but also some further negative trends. The main conclusion that can be drawn from this data may be encapsulated in a statement that civil society will not develop or may even regress without a planned and systematically implemented state policy concerning the areas of key importance for the sector. The point is mainly to start some long-term action to support civic education and the development of the non-governmental organisations sector. But these issues should also be viewed from a wider perspective – from the point of view of the development and modernisation of Poland and its place within the European Union.

For the EU, the issues related to the promotion of active participation in public life (both at the level of supranational structures and in individual member states) are becoming more and more important, which is reflected, for instance, in the Lisbon Treaty adopted at the end of 2009. In Articles 8, 8a and 8b the Treaty provides, among other things, that citizens are directly represented in the European Parliament, shall have the right to participate in the democratic life of the Union and to an open and transparent dialogue with the institutions of the Community[17]. Those propositions cannot be implemented if the societies of the member states do not try to make their citizens more active in the public sphere. Therefore it is important not only that Poland has its own strategy for the development of civil society but also that, while implementing its internal policy with respect to that area, it does so in accordance with the priorities set by the European Union.

In the meantime, successive governments have carried out a peculiar "non-policy" in this area. It consists in the general support for the idea of strengthening the role of citizens in public life and even in the acceptance,

[16] Grzegorz Makowski, Polityka rządu wobec organizacji pozarządowych…

[17] The Treaty of Lisbon amending the Treaty of the European Union and the Treaty establishing the European Community, Brussels, 3 December 2007. (2007/C 306/01)

in declarations, of proposals related to that idea (such as the introduction of turnout-raising provisions into electoral laws, establishing institutions that make it possible to involve citizens in decision-making processes). At the same time, the process of implementing specific solutions that could improve the condition of the civil society has not been progressing or is taking place very slowly, often in a chaotic and fragmentary way.

It should also be noted that the PO-PSL government, formed after the 2007 elections, adopted two documents of a strategic nature. They focus on the problems of civil society development but they cannot be called *sensu stricte* strategies. The first one is the government *Strategy for Supporting the Development of Civil Society*[18]. However, the value of this "strategy" is rather low[19]. First of all, it is more of an analytical study and not a vision stating what action should be taken in a longer perspective. Second of all, the document concerns only the period of 2009-2015 – too short to solve the key problems of civil society development. Thirdly, it concerns almost entirely a certain fragment of the civil society that is non-governmental organisations.

The other of the above mentioned documents is a government report *Poland 2030. Developmental Challenges*, in which a large chapter is devoted to the problem of civil society development[20]. This valuable study comprises knowledge gathered from numerous other analyses, combining in one compact form a number of conclusions concerning, amongst others, the development of civil society. It identifies the most important problems, such as lack of involvement and activity of the public, the lack of social trust or the institutional weakness of non-governmental organizations. It defines the most important challenges to be tackled and indicates certain directions for action. However, it is again a document that is more analytical than strategic in character, and in addition – rather general. It can provide, at most, a good foundation for constructing a proper strategy for civil society development but in itself – it is not one. What is more, even though it is a document authored by the whole government, its form and status do not oblige anyone to implement the proposals it contains.

A real strategy for civil society development and thus a coherent state policy in this respect still does not exist. It is, however, necessary

[18] Resolution No. 240/2008 of the Council of Ministers dated 4 November 2008 on adopting the Strategy for the Support of the Development of Civil Society for the years 2009–2015 and the Strategy for the Support of the Development of Civil Society for the years 2009–2015, Schedule to the Resolution no. 240/2008 Of the Council of Ministers dated 4 November 2008.

[19] Grzegorz Makowski, Zmiana czy stagnacja?...

[20] Michał Boni (ed.), Polska 2030. Wyzwania rozwojowe., Prime Minister's Chancellery, Warsaw 2009, pp. 339-372

to formulate such a policy if the state treats empowerment and the mobilisation of the citizens as its goal. Such a strategy should be adopted by the government in agreement with social partners, it should also take into account the experience of other countries (for example Estonia or the United Kingdom)[21] in developing such policies, and, above all, it should be shaped with as wide an approval of various groups and political forces as possible, so as to ensure its implementation regardless of changes on the political scene. Such a document should assume a long-term implementation perspective spanning decades. The strategy should refer to a wide spectrum of issues related to the development of civil society. That is, not only to the problems of non-governmental organizations but, as it has been outlined in the report *Poland 2030…* – to issues such as public trust, civic activity, cultural potential, etc. In addition, the strategy must contain the basic elements, typical for such instruments. That means that it must set the main objectives, forms of cooperation with social partners, types of activities and proposed ways of their implementation, the description of evaluation mechanisms and the strategy review. But above all, the strategy should also contain estimates of the costs of its implementation as well as an indication of the existing and potential sources of funding.

Last but not least, the strategy must have the appropriate status which will make subsequent governments treat it seriously and will guarantee the continuity of its implementation, which is necessary given its long-term perspective and the level of complexity of the matter. One could refer here to the British formula of a "compact" that is, a type of an "agreement" between the state and the main social partners. One could also refer to a slightly forgotten formula of a "social pact" which the Prawo i Sprawiedliwość [Law and Justice] government tried to revive without success[22].

Formulating a general vision of civil society development is a key responsibility for the Polish centres of power. The points discussed further down in this paper are, in fact, aimed at providing more details on the propositions that should become the priorities of the Polish state policy in the area under discussion and should be reflected in the national strategy for the development of civil society. The main issues to be taken into consideration

[21] See Daimar Liiv, Wskazówki jak przygotować porozumienie o współpracy [Guidance on how to prepare a cooperation agreement] [in:] Grzegorz Makowski, Małgorzata Koziarek (ed.), Wymiary użyteczności społecznej. Biznes, administracja i organizacje pozarządowe a społeczeństwo obywatelskie, Institute of Public Affairs, Warsaw 2009

[22] Declaration concerning joining the talks about social pact „Economy - Work - Family – Dialogue" was signed by social partners represented in the Tripartite Commission, 3 March 2006. The Pact, however, was not adopted.

in the formulation of the policy should include: civic education, supporting the development of non-governmental organizations and the practical implementation of the social dialogue idea.

Civic education

Shaping social attitudes conducive to involvement in public life, self-organisation, cooperation, public trust, respect for moral and legal standards is of key importance for the condition of civil society. Civic education in a democratic state should be an element of the socializing process taking place in the family, through peer groups, from the education system to the professional environment. The state can actively support this process by creating the appropriate institutional and legal environment.

Support for the non-governmental sector

In spite of the general lack of vision for a policy on civil society, in some spheres the activity of the state is relatively high. The operation of non-governmental organisations is one such sphere. The institutional and legal environment of the third sector is rather well developed and friendly to citizens' initiatives[23]. However, the third sector, on the one hand has had to struggle with financial difficulties, while on the other hand with its dependence on public funding and the weakness of the partner cooperation with public administration. As a result, non-governmental organizations more and more often play the role of contractors providing services for the public sector, forgetting about the other functions they should be performing in civil society – such as building local communities, representing social interests or in the function of mobilizing and activating. In such matters, both a coherent, far-reaching state policy is needed as well as a solution of at least some of the most acute problems.

Civic dialogue

To put it broadly, the concept of civic dialogue refers to the forms of direct contacts between citizens and the authorities oriented towards joint development of public policies. In a slightly narrower definition, civic dialogue means an institutionalised form of cooperation between the government and citizens organisations (it is thus complementary to the

[23] Magdalena Arczewska, Nie tylko jedna ustawa. Prawo o organizacjach pozarządowych, Institute of Public Affairs, Warsaw 2009

concept of "social dialogue", which refers to forms of cooperation between the government and organisations of employers and employees)[24].

The idea of social dialogue is inextricably related to the direction of changes in the policy of the European Union. At the beginning of the 21st century, counteracting the "democratic deficit" was adopted as an EU policy priority[25]. The democratic deficit consists in deviating, at the Community level, from standards characteristic of the democratic system that is participation, accountability and public control. While trying to reduce the democratic deficit, the EU structures are enhanced with various legal and institutional solutions that would allow citizens to engage in the decision making processes. That is a practical realisation of the idea of civic dialogue. The legal guarantees for strengthening such civic dialogue have been included in the Lisbon Treaty (see the introduction to this Chapter). The European Commission and the European Parliament develop methods of public consultations and gathering opinions on the key programmes and legislative initiatives. In 2008, the European Parliament adopted a resolution calling the European Union and the member states to strengthen and promote such civic dialogue[26]. Work is in progress on regulating the issue of the EU popular initiative or creating a status of an EU association – a special legal form that would allow networks of non-governmental organizations from different countries to articulate their interests more effectively on the EU forum. The sources of the democratic deficit should also be traced to the manner in which certain structures operate in the member states. Therefore civic dialogue as a way to deal with this problem should be an important issue in national policies.

Prospects for the development of civil society. What should be changed in the first place?

To sum up, Polish centres of power still face the fundamental problem of a lack of a coherent policy on civil society. The lack of well-thought-out action in this area, particularly on the part of the state, weakens the social capital of Poland, which is reflected, for instance, in low participation of citizens in the public sphere, a low level of legalism, a lack of confidence in

[24] See Tomasz Schimanek, Civic Dialogue, [in:] Lena Kolarska-Bobińska (ed.), Co warto, co należy zmienić? Poprawa jakości demokracji w Polsce, Institute of Public Affairs, Warsaw 2009

[25] EECS, The European Economic and Social Commitee. 50 Years of Participatory Democracy, Brussels 2008

[26] At this point it is worth mentioning that the main author of the resolution was a Polish MEP– Genowefa Grabowska

public institutions or a weakening dynamic in NGOs growth[27]. The only way to permanently improve the situation is to adopt a long-term national strategy for the development of civil society which will provide the basis for further concrete actions and initiatives. Nevertheless, considering the fact that in the current political reality adoption of such a document may be problematic, some improvements should at least be made in the area of civic education, supporting the development of non-governmental organisations and strengthening the social dialogue institutions.

In the case of civic education, the issue of primary importance is to recognise that this is the real priority. So far, no government has appreciated how important and at the same time how poorly developed that area of state policy has been. Solving the problems of citizens education also requires certain institutional and legal frameworks. Both, the core curricula for students and for teachers training need adjustment. The establishment of a special public institution should also be considered, an institution that would coordinate the activities in the area of civic education (for example, following the model of the German Federal Agency for Civic Education). Separate discussion and planning would be needed to support initiatives from the area of "informal civic education", that is shaping attitudes through the work of all the institutions outside the broadly understood education system – work places, non-governmental organizations, public institutions implementing tasks within other spheres of state policy (e.g. in social assistance work, culture or labour market). Here it is particularly important to launch large scale international cooperation, not only with governments or organisations from western countries but also from regions of Central and Eastern Europe.

In relative terms the most has been achieved to date has been with respect to supporting the development of non-governmental organisations; this does not imply that there is no need here for further intensive action on the part of the authorities and for other support, for instance from the international community (from the European Union first of all, but also from foreign private donors). One of the most important problems of the Polish third sector is the lack of funding for their activities. It may be partially solved by the adjustment of legal regulations, for instance by a complete exemption from VAT of donations in kind or services provided *pro publico bono*, such as for example the so called "charitable texting". Taking into account the European context and wishing to support the third sector, one should also emphasise the importance of applying the partnership principle in implementing projects funded from EU funds, connected with activities

[27] See Michał Boni (ed.), Polska 2030…

of non-governmental organizations. Organisations should be involved in the implementation of such activities not only as contractors or beneficiaries but should also take part in their planning. An issue that is as important as the difficult financial situation of the Polish third sector, is the waning interest of Poles in forming associations and working in an organised manner. That problem may be partially solved by legislative changes. The provisions that regulate the operation of associations and foundations – the basic types of citizens' organizations, need reform[28]. The changes should focus on reducing the barriers that discourage citizens from joining organizations and starting new entities.

From the point of view of the development of civic dialogue in Poland, the key elements include: the institution of public consultations and, related to that, procedure of assessing the impact of a regulation (Regulatory Impact Assessment -- RIA)[29]. As analyses show, the operation of those mechanisms leaves a lot to be desired. Only a little better is the operation of the institutions of social dialogue at the local level, such as consultative bodies grouping representatives of local government and non-governmental organisations, regulations concerning access to public information or programmes of cooperation between public administration and organizations[30]. The current practice of applying the procedure of public consultation is normally limited to work on some legal solutions and dialogue with traditional social partners, such as trade unions, employers, and possibly the Catholic Church. Other social partners are not taken into account or are selected in a purely arbitrary way[31]. Modern standards of developing public policies make it obligatory to take into account the voice of a wide spectrum of social groups and to apply consultation procedures also outside the law making

[28] See In the years 2008-2009 the Polish Donors Forum and the Foundation of Polish-German Cooperation carried out a series of seminars and conferences devoted to the problems of the functioning of foundations in Poland (including the international perspective). Conclusions from those discussions have been summarized in a special report „The Role and models of cooperation of foundations in Poland and in Europe", Polish Donors Forum, Warsaw 2009

[29] See Marek Rymsza (ed.), Organizacje pozarządowe. Dialog obywatelski. Polityka państwa, Institute of Public Affairs, Warsaw 2007 and Grzegorz Makowski, Tomasz Schimanek (ed.), Organizacje pozarządowe i władza publiczna. Drogi do partnerstwa, Warsaw 2008

[30] Magdalena Arczewska, Nie tylko jedna ustawa…

[31] See Grzegorz Makowski, Anita Sobańska, Ocena Skutków Regulacji – sposób na otwarcie i usprawnienie procesu legislacyjnego. Studium w oparciu o przykłady wdrażania systemu OSR w Komisji Europejskiej i w ramach polskiego systemu stanowienia prawa, Institute of Public Affairs, Warsaw 2009 (working material) or Przejrzystość procesu stanowienia prawa. Raport z realizacji projektu „Społeczny monitoring procesu stanowienia prawa", Stefan Batory Foundation, Warsaw 2008

processes. What is needed is a coherent system of public consultations and organisations interested in playing the advocacy role should receive support. The issue of consultations and, generally, such civic dialogue is closely related to yet another mechanism which should be widely applied in decision making processes, that is the regulatory impact assessment (RIA). Even though Poland promised the European Union and OECD to implement this instrument, its application to decision making processes is still rare. And its application is a pre-condition of rational and effective public policy making. From the point of view of civic organisations, RIA is important since through that procedure, as through the public consultation process, they may actively participate in shaping public policies by providing practical knowledge of the area that is to be the subject of the state's intervention. The development of the RIA system is particularly important from the point of view of think-tanks whose mission includes providing expert knowledge on issues related to public policy making. However, in spite of their professionalism, Polish think-tanks are underestimated, and their expert potential is only rarely used by the centres of power. In this context, it is not only the issue of building a RIA system that still remains a challenge. There is also a need for developing cooperation between organizations of experts and the centres of power and for creating mechanisms for financing think-tanks as expertise resources for decision makers.

While not forgetting the main postulate of formulating a long-term well-thought-out state policy addressing the problems of civil society, some tangible positive results could soon be realised by undertaking certain immediate actions with respect to the issues described above. Particular support is needed therefore for all initiatives in the area of civic education, the development of non-governmental sector and the implementation of the idea of civic dialogue.

About the Authors

Adam Bodnar
Doctor of Legal Science. Secretary of the Board in the Helsinki Foundation for Human Rights; assistant professor at the Centre for Human Rights, Faculty of Law and Administration, University of Warsaw; senior expert in the FRALEX network of the EU Agency for Fundamental Rights.

Krzysztof Brunetko
Journalist. He writes about legal and political system issues. He has recently published a book, *Our history. 20 years of the RP.pl,* together with Witold Bereś.

Małgorzata Fuszara
Professor of Sociology. Deputy Director of the Institute of Applied Social Sciences, University of Warsaw. She heads the Centre for Socio-Legal Studies on the Situation of Women and the Post-graduate Gender Studies Programme.

Jacek Kucharczyk
Doctor of Sociology. President of the Executive Board of the Foundation Institute of Public Affairs in Warsaw. Member of the Board of Directors of the Foundation European Partnership for Democracy in Brussels.

Grzegorz Makowski
Doctor of Sociology. Head of the Civil Society Programme at the Institute of Public Affairs. His main interests include sociology of social problems and development of civil society.

Radosław Markowski
Professor of Political Science. Director of the Institute of Political Sciences at the Warsaw School of Social Sciences, Head of the Electoral Research Unit at the Institute of Political Studies, Polish Academy of Sciences.

Paweł Swianiewicz
Professor of the University of Warsaw. Head of the Local Development and Policy Department, Faculty of Geography and Regional Studies, University of Warsaw. President of the European Urban Research Association.

Piotr Winczorek
Professor at the Faculty of Law and Administration, University of Warsaw, a lawyer – constitutionalist, columnist, writing about legal and political system issues. Former judge of the State Tribunal (1991-1993), member of the Prime Minister's Legislative Council (1994-1998).

Jarosław Zbieranek
Doctor of Legal Science and a political scientist. Head of the Law and Democratic Institutions Programme at the Institute of Public Affairs. He works on issues related to electoral law and financing of politics.