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THE CONSTITUTIONAL ROLE OF THE PRESIDENT OF THE REPUBLIC OF POLAND IN THE LIGHT OF THE "LITTLE CONSTITUTION"[1]

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1. The office of the head of state - President of the Republic reappeared on Poland's constitutional system in the specific historical circumstances of April 1989, as the outcome of decisions taken at the "Round Table". When the new constitutional Act was approved in the autumn of 1992, this office was reconstructed mainly according to existing solutions. But the motives of those who constructed the constitutional tenets in 1992 differed from those in 1989. In 1989 these were political, first and foremost, with the office of the president serving as a point of reference at the time when consensus existed for the need for fundamental political and economic reforms and for awareness of the related complexities. The query whether those reforms would be such as to leave everything unchanged in the structure of rule or whether everything should be transformed will go without reply at this point.

2. The so-called "little constitution" of 17 October 1992 (abbrev: l.c.) within which a new shape of the President's position was formed, was constructed under the overpowering influence of the person then holding the post of President. It would have been unacceptable to grant Lech Wałęsa less power than Wojciech Jaruzelski also because the erstwhile president held the mandate of universal election, while the first President - only election by Parliament. It was also formed with certain domestic patterns in mind, positive in the memory of many Poles, viz. the April 1935 constitution linked with the person of Marshal Piłsudski. It was also formed with other patterns in mind, negative to an even greater number, that is the March 1921 constitution and the then government crises, party comminution and poor state effectivness. Traditionally, the most attractive model was that of the French constitution: short, seemingly clear and simple and, above all, effective, highlighting the office of President and disciplining Parliament. The American-style presidential system enjoyed no following, it being appreciated that transplantation here would fail.

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[1] "Little Constitution" is the popular name of the Constitutional Act of the 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland and on local government (Journal of Laws [Dziennik Ustaw] of 1992 N° 84, item 426).

3. Art. 1 of the s.c. specifies the President as one of two organs "of executive rule".[2] The principle of the division of power was thereby reactivated in a definitive manner, situating this norm as the foundation on which the state's organisation stands. This provision mentions the Council of Ministers and President as wholly seperate bodies. It is, thereby, not assumed ab ovo that they act jointly as in classical parliamentary countries where they appear - as a rule - jointly through a single legal act of both these bodies. The classical definition here is in art. 2 of the March Constitution: "the organs of the Nation (...) as to executive power (are) - the President of the Republic jointly with responsible ministers".

The President, as an "body of executive power" is appointed to implement Statutes and to set and implement national policy, evidently together with a whole group of executive bodies. However, the Council of Ministers is appointed to the same role; on the basis of art. 1 alone it may be only stated that both bodies are appointed to this role to the same extent. Clearly, the constitution does not directly elucidate the concept of "executive power", this not being its task, but enumerates the various competencies of President and Government, employed to implement Statutes or to establish national policy within Statutes or in the performance of Statutes. Further constitutional regulations attempt to undertake a division of the entitlements of President and Government within the performance of the function of executive power.

4. A study of constitutional provisions reveals the following may be counted among the President's unquestionable competences expressing his performance of the function of executive power: a) introducing martial law, declaring partial or universal mobilisation (art. 36 para. 1 s.c.); b) introducing a state of emergency (art. 37 para. 1 s.c);
c) issuing regulations and orders on the basis of Statutes, with the purpose of their performance. Changes of seperate ministers of a functioning Government on motions by the Prime Minister may also be mentioned here (art. 68 para. 2). That apart, numerous similar powers for the President result from many detailed Statutes, also inherited from the former Council of State liquidated in 1989. One could mention: issuing regulations falling within the scope of the Committee of National Defence (art. 9 of the Universal Duty of Defence Act of 21 November 1967), decisions on the use of troops to perform police duties (art. 18 para. 3 of the Police Act) and recognising relicts of particular value for culture as historical monuments (Act of 15 February 1962 on protection of cultural values and on museums). It is thus clear that the constitutional and statutory powers specified here may be classified as individual application of law rules, issuing executive legal regulations and acts of ruling the state, and defining one direction or another of its development in particular areas of public affairs.

5. However, constitutional and statutory provisions hold other very numerous powers which do not enjoy such a character and do not express the performance of executive functions even with its wide range of forms in mind. Art. 1 s.c. should, in such

[2] Art. 1 of s.c.: "The state bodies of legislative authority are the Sejm and Senate of the Republic of Poland and - of executive authority - the President of the Republic of Poland and the Council of Ministers and - of judicature - independent court".

context, be confronted with art. 28 occupying a special position in the structure of s.c., as the first article of a seperate constitutional chapter entitled "President of the Republic of Poland", which also should be treated as of special significance.[3] In para. 2 of this article, more important than para. 1, there is talk of two similarly defined tasks of the President: of "upholding" and "safeguarding". These two definitions can surely be linked together to speak of the task stemming from art. 28 para. 2 as "protecting" which, in its usual sense includes the duty of defending against "dangers of violating something" or "enemies", though the sense of this word also consists, surely, of ensuring some extent of durability of the protected value.

Clearly, the Constitution must and does speak of what the President is to protect: 1) adherence to the Constitution, 2) national sovereignty, 3) national security, 4) territorial integrity and indivisibility and 6) compliance with international treaties, by Polish authorities of course.

6. This provision differs in nature from the above mentioned provisions concerning competence. In my view this provision expresses general goals or the expected effects of the functioning of the office of President, or else the general tasks which he should implement using all legal means at his disposal. This may not be a provsion concerning competence, comparable with that on declaring mobilisation in cases of an external threat to the state (art. 36). To implement defence of national security or to uphold compliance with international treaties could consist of a multitude of various activities. It is unacceptable, particularly in a state proclaiming the principle of legalism (art. 3 of the valid provisions of the 1952 Constitution) that they all could be undertaken by the President as he may think fit. This provision states that all bodies of authority act on the basis of legal regulations which signifies that all bodies must be equipped with legal (mostly statutory) instruments specifying when they may act, what their activity should consist of, to whom such activity is to be addressed and what could its effects be, i.e. to what it could obligate. The President's right to issue executive regulations (art. 45 para. 1) satisfies all these requirements, while the right to protect territorial integrity does not, surely. Evidently, the latter right is implemented by appropriate use of all concrete competences' held by the President on the grounds of other provisions, for instance that just mentioned of issuing executive regulations to appropriate Statutes. Thus, on the one hand, there would exist practical provisions of competence and, on the other, also a provision speaking of the effects for which the President is empowered to use the competence he holds.

Let it also be remarked that the specific tasks contained in art. 28 para. 2 s.c. and placed before the President are not all the goals of state authority. This provision, in particular, says nothing of the tasks of the country's and society's economic, social and cultural development, the need to protect the natural environment, to maintain public

[3] Art. 28 of s.c.: 1. The President of the Republic of Poland shall be the supreme representative of the Polish State in internal and international relations. 2. The President shall ensure observance of the Constitution Safeguard the sovereignty and security of the State, the inviolability and integrity of its territory, as well as upholding international treaties.

order and individual security etc. However, the constitutional provisions deal with many, though not all, of these issues, particularly as regards individual civic rights. In a word, since the President has been made a body entrusted with compliance with the Constitution, the implementation of these national tasks is subject to his "upholding". The thing is that compliance with the Constitution is not only the nonviolation of the constitution but also the positive duty of implementing the constitution,[4] substantiating it through current legislation. Hence upholding by the President that the Constitution is adhered to, is both protecting the Constitution against infringement and any restitution of its previous state, but also inspiring and supervising the process of substantiating the Constitution.

Though the peculiar nature of art. 28 para. 2 as a provision which creates no concrete presidential competence but indicates the purposes of his activity, may become an independent basis to legitimise certain of his operations, i.e. the legal foundation required by legalism. But it would be going too far just to reduce this solely to distinguising purposes without also defining the grounds for activity. However what is aimed at here is only non-ruling activities where the rights and duties of other objects are not defined, but through which certain issues could be presented publicly and steps to resolve them called for.

All manner of appeals, public proclamations and, e.g., manifests to the national or local government inspired by art. 28 para. 2 would find their legal grounds there. But such activities as concluding international agreements, issuing legal regulations where acts do not require the President to perform them etc., would find no legal grounds there, though the linking of such steps with art. 28 para. 2 would be evident. The thing is that here one has to do with binding acts of rule.

7. A question is whether one could characterise in general the subject to which the analised concept refers: what is the President "to safeguard". When tackling this question it should be stressed that such issues as the constitution, sovereignty and national security, territorial integrity and credibility in international relations are fundamental, existential values to any national community, without which the community could not exist, maintain its identity and develop. It is to safeguard these that the Constitution creates the office of President. Art. 28 para. 2 assigns him a role substantially exceeding the function of one of the two bodies of executive power (with any other comprehension, an unusually wide interpretation of the concept of such authority would be required).

The role of safeguarding durable and existential values is, however, qualitatively different than the defining of current and even anticipated policy but of a restricted time horizon, always geared to implement certain strictly defined intentions. That second function is entrusted to the Government.

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[4] In this regard the conclusions reached by S. Rozmaryn, *Konstytucja jako ustawa zasadnicza* [The Constitution as the Basic Act], Warszawa 1967, p. 36, p. 160 and ensuing.

The functioning of the office of President, however, consists of the durable security of immutable values, which can be given various expression depending on specific conditions and situations. That is why the Constitutes assigns the President a certain influence on setting long-term or even day-to-day national policy, i.e. performing the function of one of the two supreme bodies of executive power. But that function, too, must be subordinated to the general guideline in art. 28 para. 2, when it is tackled by the President. The function of a safeguarding factor is not an element of the President's function as a supreme body of executive authority. The opposite is true: the President's competence expressing his activity as a body of executive authority must also be subordinated to his role as a safeguard of fundamental values of the Nation.

Such interpretation refers to the concept of neutral authority recognised in the history of constitutionalism and formulated by B. Constant. Polish literature[5] has also pointed to the links of the structure with constitutional solutions also in the French Fifth Republic. It is evident that the updating of the constitution of the 7 April 1989 found roots, among the Poles who created it, in the French contemporary constitution.

8. The manner of designation applied to this function, the universal and direct election by the nation, assigns special dimensions to the President's functions. The values safeguarded by the President are so fundamental that it was accepted that the safeguarding person should hold a direct mandate delivered by the sovereign. This grants a great specific weight to all the President performs, and imparts proper caution and respect to their manner of treatment. This is also true of all activities less institutionalised in constitutional provisions: meetings, speeches, messages and other letters. The function of a person safeguarding existential values also dictates a specific manner of evaluating the process of nominating the President. Candidates to that office should not present concrete election programmes; their programme should be the Constitution, in particular art. 28 para. 2, the values quoted there being fully unambiguous in substance.

The effects of designating the President in universal and direct elections are consolidated by the constitutionally defined role of the formula of the oath the President takes, in which his character of a person representing the nation is confirmed together with confirmation of the obligation he carries to safeguard the mentioned values. The wording of the oath and of art. 28 para. 2 coincide and thereby confirm the special systemic role which the Constitution has assumed.[6]

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[5] Cf. K. Grzybowski, "Moderator imperii" Czasopismo Prawno-Historyczne, Vol.XV (1963), K. Wołowski, *Prezydent Republiki w powojennej Francji* [President of the Republic in Post-war France], Warszawa 1973, p. 163. W. Szyszkowski, "Benjamin Constant. Political and Legal Doctrine on the Background of the Epoch" Warszawa, 1984 p. 174.

[6] Art. 30 of the s.c.: "1. The President takes up office after taking an oath before the National Assembly of the following text: "Assuming, by the will of Nation, the office of the President of the Republic of Poland. I do solemnly swear to be faithful to the provisions of the Constitution; I pledge that I will steadfastly quard the dignity of the Nation, the independence and security of the State, and also that the good of the Homeland and tge orisoeruty if uts cututebs sgakk firever renaub ny szorene ibkugatuib". The oath my be also made with the additional words "So help me God".

On the other hand, however, political practice clearly indicates that universal elections lead to increasing politicisation of the office of President. Candidates are, formally, announced by the citizens at large but, in essence, they are put forward by political parties or social movements with evident political affiliations. The election depends rather on the stand which candidates take on current political issues than on the values in art. 28 para. 2. These determinants arc also the guidelines for voters when handing in ballot papers. His rather short term of office (5 years) is also not in harmony with the President's assumed role, with permission only to hold the office twice. The role of a safegurding factor of durable and immutable values would suggest a solution leading to greater stability in the filling of this body.

9. The terms used of "upholding", "safeguarding" and "protecting" also contain the future character of concrete competences of the President. It evokes other images of them than those called up by such terms as "directs", "manages" or "ensures". The President must, above all, be granted wide control powers which would allow him to assess how other bodies function and whether activities endangering or even violating the guarded values have been undertaken. But a "safeguarding" President is much more than just a controller. So, secondly, the President must wield powers allowing him stop such moves (the idea of "brakes" in the system of seperation of power comes to mind), or else to reinstitute the previously existing state of affairs. This also fits into the role of a "safeguarding factor" and also requires that he be equipped with appropriate competences geared to evoking such effects.

10. Para. 1 of art. 28 has not been dealt with so far. It lays down the representative functions of the President, qualifying him as "the supreme representative of the Polish State in internal and international relations". In my view, the performance of representative activities is also subordinated to the requirements contained in art. 28 para. 2 previously analysed, though those activities do not always require direct reference to the values presented there. The traditional expressions of performing representative functions are determined by constitutional provisions (Cf. art. 4 para. 2 - ordaining elections to both chambers of Parliament, art. 9 para. 2 - calling the first meetings of these bodies, art. 18 para. 2 - signing a Statute and ordering its publication, art. 35 - supreme commander of the Armed Forces, art. 33 - ratification and denuncification of international agreements, art. 32 para. 2 - nominating and withdrawing Polish diplomatic representatives and also accepting letters of accreditation of representatives of other countries in Poland, art. 43 - the right of clemency, art. 44 - awarding orders and distinctions, art. 41 - granting Polish citizenship and freeing from it), these being supplemented by statutory regulations (e.g. nominating consuls, nominating to the first rank of officer and to generals' rank, awarding ensigns to military units, granting scientific titles of university professor etc.) and also even by rules and regulations of the parliamentary chambers (nominating Senior Speakers).

The above provisions do not exhaust all situations of a President's activities as in art. 28 para. 1. This is a general competence which also includes the right to symbolise the presence of the State wherever that is required or accepted by custom, or else wher-

ever the President may desire to make such presence tangibly sensed. It is difficult not to remark that these latter situations are particularly convenient for the President to use them for the purposes of art. 28 para. 2. Speeches by the President on national holidays and other anniversaries, New Year addresses or on the occasion of Harvest Home Festivals, the laying of wreathes, visiting places commemorated in a special manner in the national memory and participation (without declarations) in specific events - all that can be of enormous importance to consolidate the values in art. 28 para. 2.

11. In consequence of the above deliberations the following conclusions may be arrived at, at this point:

1. The fundamental role of President is the function of a safeguarding factor for the very existence of fundamental values for Polish statehood.
2. This function is implemented by:
   a) activities in the nature of the body of executive authority,
   b) by activities in the nature of the supreme national representative,
   c) by "safeguarding" activities, control, restraining, restoring and stabilising activities.

12. The next problem to be studied should be that of delimiting the functions of President and Council of Ministers as two supreme bodies of executive power. To begin with, let it be noted that while valid constitutional regulations supply material to construct a complex image of the President's functions, in the case of the Council of Ministers the matter is not so complex.

The principal role of the Council of Minsters is presented in art 1 s.c. and elucidated in art. 51 of that act as "the pursuance of national policy" (external and internal) and "to direct the entirety of the government administration". In effect, art. 51 elucidates the essence of the concept of "executive power", by highlighting its two major aspects: national administration and defining general national policy in matters regulated and not regulated by Statutes. The discharging of executive authority means to set policy which is, essentially, variable and responding to specific situations, while the safeguarding of specific values is, essentially, durable and immutable since the subject here is certaing fixed goals, independent of circumstances. The substance of art. 28 para. 2. emerges to a fuller extent after referring to art. 51.

13. Art. 52 para. 1 is of fundamental significance when delimiting the functions of President and Council of Ministers. It introduces supposed competence of the Council of Ministers, which is also effective "expressis verbis" towards the President when taking "decisions in all matters of national policy", i.e. in matters of executive power. Such supposition is next confirmed by the beginning of para. 2 in this same article when use is made of the term "in particular", preceding the practical definition of tasks but also the enumeration of the most important though not all Council of Ministers powers. The title of the chapter containing this studied article is also not void of meaning, which title introduces identity of the terms "Council of Ministers" and "Government". In this light, the body which basically and primarily is nominated to conduct

government is the Council of Ministers. Other bodies may "rule" the country only in exceptional conditions, on the basis of unambiguous reservation by constitutional provisions and within the scope of such reservation. Only constitutional provisions, as provisions equivalent in rank to art. 52 para 1 can make exceptions from the principle mentioned therein.

14. The constitional provisions, indeed, make such exception, and that in three areas of executive power; what is of particular importance is that these three areas are in close proximity to the President's overall role as the safeguarding factor of the principal values of the state. They are: 1) foreign relations (art. 32 para. 1), 2) national external security (art. 34) and 3) national internal secuirty (also art. 34). It is significant that in all three areas the s.c. entrusts the President with "wielding general supervision" by a competence provision of far from accurately defined substance. At this point the mentioned executive powers should also be kept in mind. The competences enjoyed by the President to deliver opinions on candidates for ministerial posts in these areas (art. 61) are also worth stressing, prior to proposals of ministerial posts being formally submitted by the person designated for the post of prime minister.

15. However, the manner of delimiting areas of activity within the scope of executive power - President and Council of Ministers - is not complete. The President is not equipped with the entirety of authority in these areas. Under art. 52 para. p. 7 and 8, in the three above areas of activity the Council of Ministers is to pursue the functions of: a) maintaining relations with the governments of other countries and with international organisations; b) concluding agreements with them; c) ensuring external national security; d) ensuring internal national security. It should be noticed that the functions of Government are more precisely formulated than the President's functions who has only to pursue general guidance ("supervision"). But since, as has been shown, the areas of international relations, and external and internal security also lie in the sphere of the Council Ministers in a certain manner - the clause in art. 51 para. 1 of "Government pursuing national policy" also referring to these. Hence, the above provision assumes in an imperative manner, far-reaching cooperation of both those bodies.

The second fundamental link between President and Council of Ministers stems from the institution of countersigning. The President's concrete powers of an executive nature appearing in these three areas are either powers wielded solely against countersignature - that is nonautonomously (e.g. issuing executive regulations to Statutes), or also nonautonomously though without countersignature (e.g. the President may maintain contacts with other countries and with Polish agencies abroad only through the foreign affairs minister - art. 32 para. 3) or else they are powers without final binding nature, e.g. the earlier mentioned issuing of opinions concerning three ministerial posts.

16. The institution of countersignature is regulated in the s.c. most rigorously. Firstly, it cramps the President since he may perform the powers encompassed by this requirement only on a motion by the appropriate member of Government (minister or prime minister). In such situation, in particular, when he is bound by a distinct constitutional or statutory provision to undertake certain concrete steps, but the proper minister does

not present an appropriate motion, the President should demand (directly or through the intermediary of the prime minister) that such a step be taken. Only the final issue of an act without any government motion is inadmissable.

The second restriction inherent in the institution of countersignature consists in making a President's act - for which a countersignature is required - valid only should such countersignature be given. A presidential act is invalid, that is cannot have political effect, without countersignature. Clearly it is not a nonexistent act but can give rise only to certain political effects and raises the issue of the President's constitutional responsibility for violating the Constitution. Thus, in situations of countersigned acts, we have to deal with an activity which requires consistent procedure by two bodies under the law: the President and an appropriate member of Government. While this act is being issued, bilateral control could occur: the President may control whether the minister has drafted the act and next check its substance and decide whether he will approve it. The Minister, on his part, controls and, in the final account, consents to the amendments introduced by the President (before that - to any projects or suggestions) before he decides to present it as his motion and then to give it his countersignature. Should the two stands taken be divergent, a valid act will not be issued.

The fundamental, if not sole, critérium of the President's control should be the general principles rooted in the functions he performs under art. 28 para. 2.

17. The next enormously important element which chacterises the manner of resolving the countersignature institution of Presidential acts in present constitutional regulations has another significance: namely, not all presidential activities are subject to its requirements. Firstly, the s.c. used the rather vague term "legal acts" to describe presidential action which is subject to this requirement. One of the latest decisions handed down by the Constitutional Tribunal (W 1/95 of the 5 September 1995) declares that not all possibilities of activity known to present law are implemented in the form of "legal acts", while those which are not "legal acts" do not require countersignature. Under that decision, these include a presidential motion to the Constitutional Tribunal (C.T.) of imposing a generally obligatory interpretation of Statutes. Independent of that decision (not by accident were three differing opinions attached to that C.T. decision), the fact is that the C.T. does legalise certain presidential activities of an official nature and not endorsed by a countersignature. Secondly, by their very nature countersignatures are required only on written documents, Presidential acts enacted in other forms do not require countersigning and are valid without it.[7] Thirdly, which is perhaps the most important, art. 47 contains a list of some 20 powers of the President which are clearly exempt from the countersignature requirement, i.e. of the requirements of both the above conditions; they are substantiated without the need of a previous ministerial (Government) motion and also are valid exclusively as the outcome of being undertaken by the President.

[7] Cf. . A. Gwiżdż, Zasada i tryb kontrasygnowania aktów prawnych Prezydenta Rzeczpospolitej [The Principle and Manner of Countersigning Legal Acts of the President of the Republic] Biuletyn Rady Legislacyjnej No. 1/1994, p. 227.

The reasons why a series of presidential activities are exempt from the requirement of countersignature, thereby creating what in Polish constitutional traditions is called "prerogatives", are understandable. The role of the President, identified in art. 28 para. 2, is of particular consequence and must also produce certain effects on Government, since Government and perhaps primarily Government, can perform activities which do not fully serve implementation of the constitutional values therein specified. With this in mind the steps taken by the President in regard to Government may not be made dependent on, firstly, its proposals and secondly, its consent to the validity of such steps.

18. The exemptions in art. 47 concern, first, the President's competence as the supreme representative of the Polish State in both internal and external relations. These include: the granting of citizenship, acts of clemency, awarding orders and distinctions and nominating judges. These are traditional powers and, though formally exempt from countersignature, are practically substantiated only on motions presented by specific state bodies, in a manner defined by appropriate Statutes. This group of competences also includes nominating by the President of Supreme Court presidents, the president of the Supreme Court of Administration and other judges (the latter only on motions by the body representing court authorities), announcing elections to Parliament, calling the first meeting of Parliament, presenting acts of nomination to Council of Ministers members and (by essence of the matter) to swear in new Council Ministers members, to accept Council of Ministers dismissal and to entrust it, despite dismissal, to act as caretaker till a new Government is established. In all such situations, the issue is to perform acts of the supreme state representation and also to make it clear that the existence and functioning of Parliament, Government and the judicature constitute the functioning of the State as such, symbolised by the President. In general, these are obligatory competences which do not constitute a wider area of discretion.

It is characteristic that the powers exempt from the countersignature requirement do not include competences within the scope of executive authority (issuing regulations, imposing martial law and a state of emergency, declaring mobilisation). These may be implemented solely against countersignature, constituting the external expression of unity of action of the whole executive structure.

19. However, the most important group of powers among those listed in art. 47 are the competence of the President as a "safeguard". In accord with earlier remarks, these are primarily control activities. They include commissioning the Supreme Chamber of Control (NIK) to perform controls, the signing of Bills of Parliament (clearly including control of their substance) signing Council of Ministers regulations with the power of Statutes. By the very nature of things it may also be stated that the President also accepts information from the Prime Minister "without countersignature" on the principal issues tackled by Government (art. 38 para. 1). Clearly, apart from such concrete control activities, the President checks the manner in which state authorities are operating, undertakes current analyses and evaluates their activities, in a word - controls them in the widest sense of the term for which he does not require seperate constitutional authorisation. The values specified in art. 28 para. 2 are clearly the criteria for such con-

trol. At this point the functioning of the Presidential Chancellery, his "executive organ" (art. 48 para. 2), should be mentioned. Generally, constitutions do not institutionalise the functioning of such auxiliary bodies. In this case the authors of the s.c. clearly attached great importance to it. The Presidential Chancellery could be of practical assistance in, int. al., observing and analysing Parliament's and Government's day-to-day work so as to prepare the grounds for appropriate reaction by the President.

It must also be highlighted that sui generis the President can also implement control by performing many of his earlier mentioned representative activities, many of which - by their very nature or by clear legal disposition - are drawn up by appropriate government ministries or other bodies. Performing activities to this extent, dictated by the law or custom, the President enjoys the possibility of undertaking even the most general control of a given area. The control element which appears when the President performs his executive powers fulfilled by countersignature, has been earlier discussed.

20. Secondly, diverse possibilities exist to restrain the functioning of other authorities or their various legislation as the direct outcome of control powers and practical moves. The right to veto legislation (art. 18 para. 3), to appeal against Bills and Statutes to the Constitutional Tribunal in preventive and sequent control proceedings (art. 18 para. 4 - but cf.more general wording of art. 47 p. 6)), to veto Council of Ministers regulations issued with the power of Statutes (art. 23 para. 7), to appeal to the Constitutional Tribunal against regulations with the power of Statute in preventive control procedures (art. 23 para. 6), to address to Parliament motions to bring to constitutional justice before the Tribunal of State - ministers, presidents of the Supreme Chamber of Control and National Bank of Poland (NBP), the Supreme Military Commander, heads of central government offices and members of the National Council for Radio Broadcasting and Television (art. 47 p. 10). The dissolution of Parliament (art. 4 para. 4), should also be numbered among these. The President's competence here is restricted, however, to situations strictly defined by constitutional provisions: should the national budget not be approved in the specified time (art. 21 para.), should a Government not be nominated at the start of a new term of office of Parliament (art. 62), should a vote of no confidence be passed when electing a new prime minister (art. 66 para.). Hence, this concerns particularly flagrant acts of negligence by Parliament and, thereby, the need to reach for art. 28 para. 2, though not in all situations, but those which the President would evaluate as threatening the fundamental values he safeguards. In all such situations the President only has the possibility but not outright duty to dissolve the House.

It is imperative, in this context, to observe that the President does not wield analogical powers in regard to Government, equivalent to the right to dissolve Parliament. The mentioned right to present Parliament with a motion to initiate constitutional responsibility procedures is only a kind of palliative. Since the right to dissolve Parliament is also severely restricted, it could be concluded that the the most appropriate manner in which the President could react to violation or, at least, fears of violating the values in art. 28 para. 2 would be, in the intentions of the authors of the s.c., various means to

animate Parliament or Government and to inspire or suggest that specific steps be taken or desisted.

The President could also react by purely practical activities stemming directly from art. 28 para. 2 or else within its framework. One might conjure up all manner of appearances in the public media, the granting of interviews etc. and the exposure of inadmissible activities, cautioning against specific steps or, vice versa, appealing that concrete steps be taken. Such active moves on the President's part are fully justified in the constitutional structure of that office.

21. So we come to the third group of presidential powers described in art. 47 and elaborated in this paper. These were earlier defined as competences addressed at consolidating safeguarded values. The aim of this is to consolidate them in the legal system, in constitutional customs and, thereby, in the political culture of society and the national authorities. It is so very important that the President may autonomously, without ministerial countersignature, only animate to, inspire or suggest activities, as was earlier mentioned. While demarcating a truly wide field of presidential activity, the constitutional provisions do not envisage any presidential decisions of a binding nature, materially ultimate. Such activities are in areas reserved for supreme national bodies, specifically of a political nature, i.e. Parliament and Government. For that reason they are, generally speaking, the addressees of presidential messages. To these powers one could count: legislative initiatives (art. 15 para. 1), messages to Parliament (art. 39), the right to call Council of Ministers meetings and preside over them, the right to order a referendum (art. 19 para. 1 p. 2 - though in this case with the additional consent of the second parliamentary Chambeer, and also to designate a person to the post of Prime Minister (art. 51 para. 1). The latter may be classified as a described type of power only should its implementation exist in a situation of an absence of an unambiguously crystallised parliamentary majority, that is when the President's designation does not reflect a previously determined party and political configuration of forces in Parliament and could even decide on the election of one or another of several configurations which may appear. The President enjoys only a slightly greater liberty of maneouvre, when he exacts the right to submit a candidate to the post of President (art. 40) of the National Bank of Poland, giving preference to a person he trusts, though with the requirements of art. 28 para. 2. As has already been stressed, of fundamental importance for the role of the President herein described could also be the representative function he performs.

Special attention in the context of this group of presidential powers should be directed to the so-called ministers of state, who are functionaries of the President whom he can entrust with the task of "representing him in matters related to the performance of his (i.e. the President's) powers". When interpreting this provision in a special manner, since it does elaborate the extent to which the mentioned "representing" could go, the President's practical possibilities of action could be huge, the more so that the number of ministers of state is undefined and depends solely on the President.

22. Now that those three kinds of powers within the framework of competence not requiring countersignature have been defined, it could be worth establishing just what

these competences do not contain and what the role of the President - as safeguarding factor - could comprise. He does not have the right to issue legislative norms with power of statute on his own, even in states of emergency. He has no powers to dismiss the Government even should he ajudge its activities as endangering or harmful to the tasks in art. 28 para. 2, his potential to dissolve Parliament being severely restricted from the same viewpoint. In particular, no possibility exists, as it does in art. 16 of the French constitution of 1958, to introduce a "state of danger to the Republic" and to take any steps tending to reimpose the normal functioning of the State. The so-called "reserve authority"of the President of Poland is, evidently, severely limited.

23. A study of the list of the President's powers requiring countersignature, both constitutional and framed by normal Statutes, leads to the statement that many of them, apart from executive competences, are reminiscent in nature of the powers enumerated in art. 47. The power to present motions to the C.T. on performing a unversally obligatory interpretation of Statutes has been earlier mentioned. Other examples are the President' s right to submit motions to Parliament on nominating and recalling the First President of the Supreme Court (art. 61 para. 4 of the still valid 1952 constitutional provisions), moving that the C.T. control the constitutional and legal correctness of main normative Acts, accepting the dismissal of individual ministers (art. 67 para. 2) et al. The requirement to obtain contrasignatures to many of these is incomprehensible.[8] Firstly, what could be aimed at here is "safeguarding" type activities, which assume the President's autonomous actions. Secondly, what could be aimed at is something of a "continuity" of powers exempt from conutersigning (e.g. submitting a candidate for the post of NBP president to Parliament does not require countersignature, while the nomination by the President of NBP deputy-presidents requires such countersignature, probably of the Finance Minister). Thirdly, there often is no place for countersignatures "by the very nature of things", for instance when accepting the dismissal of ministers, a competence unmentioned in art. 47. Having said that, the constitutional and statutory list of Presidential powers surely requires to be studied and fresh constitutional solutions imposed.

24. The vision of a President - safeguarding factor of constitutional values has no political responsibility before Parliament. This aspect of the head of state's position, characteristic for both parliamentary and presidential states, attains additional justification here. Such additional justification is imperative to the extent that we are dealing here also with powers performed autonomously, not included by countersigning. The lack of responsibility to Parliament (not to mention Government) is clear since the President cannot be responsible to bodies whose activities he controls and restrains independently. Direct responsibility to the Nation which appointed the President to perform his post is also not envisaged in constitutional provisions, which is clearly different from the responsiblity in a situation when he is running for a second term of

[8] Vide particularly in this regard the critical opinions of Z. Jarosz, "Legal and Practical Problems of Countersigning", Biuletyn Rady Legislacyjnej no. 1/1994 p. 234, passim.

office. The recalling procedure, exemplified in the 1919 German Constitution, thus does not appear here.

But can there be talk of the President's direct responsibility to the Nation in situations created by the s.c. in which the Nation is called to act due to specific moves taken by the President. A situation is then created in which the Nation may also indirectly evaluate those steps taken by the President. Such are referendums ordered by the President and general elections to Parliament occuring after the President resolved that Parliament before its term of office ended. Both these situation do exist also in the Constitution of the Fifth French Republic and serve (or served) a specific political practice. "Normal" elections to Parliament which arc held during the President's term of office, may also be taken into consideration in this context, though only should the President become committed in the election campaign. To link all these situations with the President's political responsibility would be an emphatic sign of the personalisation of authority in Poland and of the plebiscitary concept which is almost foreign to Polish systemic traditions. The short practice of system management in Poland, which includes only one case of dissolving Parliament, and that on the grounds of a provisional constitution - it must be remembered - is surely not a signpost pointing in that direction.

What remains is constitutional responsibility "for violating the Constitution or legal Acts, and for perpetrating crimes" (art. 50 para. 1), which was substantiated by the Tribunal of State on an appeal presented by the National Assembly. The Tribunal of State is empowered, should it recognise the President's guilt, to remove him from office by its verdict.

25. Such would be the most oustanding characteristic features of the present constitutional structure of the office of President. These solutions refer little to Polish systemic traditions but rather possess foreign-inspired models (France and Portugal). Surely, as in those countries, the factual role of the President in Poland will depend on party and political patterns in Parliament and Government. But even should an enormous domination of political forces hostile to the President exist there, he will not be wholly deprived of influence on the shaping of affairs of state.To that extent his position differs from that of President in a classical parliamentary system, who is doomed in such a state of affairs to perform, exclusively, representative functions. One might claim that Poland's solutions could be an interesting contribution to the ongoing discussion on the existence of so-called semi-presidential system principles.[9]

[9] Cf. recently: H. Bahro and E. Veser, "Das semipraesidentielle System- «Bastard» oder Regierungsform sui generis?", *Zeitschrift fuer Parlamentsfragen*, no.3/1995 and the literature discussed therein.