

*THE ROLE OF LAW IN THE POLITICAL SYSTEM
POLISH-NORWEGIAN LEGAL CONFERENCE*

*(INSTITUTE OF LAW STUDIES, POLISH ACADEMY OF SCIENCES,
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On the occasion of a visit to Poland of a group of outstanding Norwegian lawyers who accompanied the official delegation of the Government of Norway, a scientific conference on the role of law in the political system was organized on June 4, 1990, at the Institute of Law Studies, Polish Academy of Sciences in Warsaw.

The ceremonious opening was attended, among others, by head of the delegation of the Government of Kingdom of Norway, Secretary of State at the Prime Minister's Office K. Eide and Ambassador P. Svennevig from Norway, and by President of the Polish Academy of Sciences Prof. A. Gieysztor, 1st President of the Supreme Court Prof. A. Łopatka, the Ombudsman Prof. E. Łętowska, and Under-secretary of State at the Bureau of the Cabinet J. Cierniewski, LL.D. from Poland.

Beside the Norwegian guests, the meeting was attended by about 30 Polish lawyers, scientists as well as practitioners, who represented Jagellonian University, Silesian University, Warsaw University, Wrocław University, and Institute of Law Studies, Polish Academy of Sciences, as well as Bureau of the Cabinet, Constitutional Tribunal, and Ministry of Foreign Affairs.

Opening the proceedings, head of the Institute of Law Studies of the Polish Academy of Sciences, Prof. J. Łętowski expressed his hope that the conference would promote the Norwegian guests' better understanding of the directions, mechanisms and political background of the structural transformations in Poland, thus contributing to the development of closer cooperation between the two countries. He also pointed to the importance of exchange of experiences and ideas with representatives of theory and practice from a country with an established democratic system for improvement of constitutional solutions in Poland which now builds its new political system.

In his introduction to discussion, the Secretary of State K. Eide expressed his conviction that the process of political revival of Central and Eastern Europe is a valuable inspiration for Western countries which should continuously seek more and more effective guaranties of democracy, freedom and human rights both on the national level and on that of European organizations and institutions. Recognizing separation of powers as the paramount guaranty against absolutization of State authority, K. Eide quoted the examples of struggles for realization of that principle in Norwegian constitutional history (in the 19th century, competences were divided between the King and Parliament ; today, they are divided between the Parliament and Government, the central and local administration). The mechanisms that secure balance between State agencies and between parties and other social forces participating in public life should be supplemented with purposeful activities of the State for the development of an active civic society. Referring to a Polish-

Norwegian seminar on trade and market economy, scheduled for the second day of the visit, K. Eide stressed the causality between political freedom and free market economy, introduced parallel in Poland.

The first subject discussed at the conference was the structure and functioning of the supreme State authorities. Vice President of the Norwegian Academy of Sciences and Literature Prof. C. Smith from the University of Oslo characterized the main principles on which the Norwegian Constitution is based : sovereignty of the nation, separation of powers, and respect to human rights. The Norwegian Constitution, passed in 1814, is often inadequate in practice to the requirements of governing a modern State. In many doubtful questions, the customary solution was adopted as valid. The post-war history of Norway includes a period (1945—1961) of indivisible rule of the Labour Party which was characterized by stability and debarment from power of the Opposition, followed (after 1961) by minority and coalition cabinets whose survival depended on forced cooperation and concessions to the Opposition which impaired the Government's position in the political system. C. Smith also spoke of the specific institutions of Norwegian political system : a lack of a constitutional disposition concerning dissolution of the Parliament ; the consultative referendum which is also not provided for by the Constitution but actually applied by the Parliament ; and judicial review of constitutionality of law, unprecedented in Europe at the moment of its establishment.

The paper delivered by head of the Legal Office at the Bureau of the Cabinet M. Graniecki was devoted to the position in the political system and organization of work of the Government of Republic of Poland. The author discussed the present system of functional connections of the Government with the two parliamentary chambers, the President, and local administration. He stated that according to the present state of law, the position of the Cabinet against the background of other supreme State authorities has grown similar to that taken by the Government in the Parliament-cum-Cabinet system. The Sejm exerts a most intense supervision and influence on the Government. A novelty in Poland is the genuine character of the Government's political responsibility, as well as the deputies' most active approach to Government bills. Recapitulating, the author pointed to the transitory nature of the now valid solutions in the face of the forthcoming passing of a new Constitution.

Comparison of the systems of protection of civic rights was opened by the Parliamentary Ombudsman A. Fliflet who delivered a paper on supervision over State administration in Norway. The Norwegian Constitution regulated supervision over State administration but fragmentarily which is due to parliamentary responsibility of the Government and to the State-citizen relation designed to secure inviolability of rights and liberties to the latter. Important provisions concerning the citizen's legal status in proceedings before administrative agencies are contained in the Act on public administration. The institution of Storting Ombudsman for public administration provides for a supervisory procedure which is largely speeded-up and simplified compared to the judicial one. The Ombudsman who is elected by the Parliament ascertains an infringement of law by the administration to the detriment of a citizen basing on a complaint received, and addresses his remarks at the agency concerned (possibly also at a superior one or at the public prosecutor). Though not legally binding, the Ombudsman's comments are universally respected. The informal nature of complaint lodged with the Ombudsman is of particular importance for its popularity and hence also effectiveness.

Selected problems of protection of human rights in Poland were discussed by L. Kański, LL.D., from the Institute of Law Studies, Polish Academy of Sciences.

He described the still valid constitutional catalogue of civic rights and duties of 1952, and defined the institutions of Chief Administrative Court, Constitutional Tribunal, and the Ombudsman, established in the 1980s, as the framework of a system of civic rights protection. L. Kański discussed the works on the formulation of the problems of human and civic rights, liberties and duties in the new Constitution of Republic of Poland. Of basic importance here is the relation of the citizen's status—that is, of his rights and duties—to the conception of the State's political system, and settlement of the question of extent and the way of performance by the State of the protective and organizing function. L. Kański mentioned the predominant ideas of the new constitutional regulation, among them the treatment of the citizen first as a human being and only then as member of a social group ; protection of minority rights against domination of the majority ; renouncement of “mechanical” egalitarianism ; consistence of the constitutional regulation of rights and liberties with international norms.

Chairman of the Norwegian Human Rights Committee, attorney T. Böhler delivered a paper on the role of the Bar in a lawful State (*Rechtsstaat*). He expressed the conviction that in such a State, which fulfils the principle of separation of powers, special role falls to independent judges whose activity would be most difficult without participation of the Bar : “active and brave counsels for the defence who are independent of State administration.” Norwegian Association of the Bar is solicitous for its members' professional and moral standards ; it represents the interests of the profession in contacts with the outside world ; it carries out training ; and passes its opinions about the valid and drafted law. Further in his paper, T. Böhler described cases of infringement of respect to human rights found in Norway, among them unequal access to legal protection due to its high costs ; hindered vindication of rights in the sphere of social insurance ; most strict immigration provisions ; the use of penal sanctions by administrative agencies.

During the discussion, M. Wyrzykowski, LL.D. (Warsaw University) discussed the importance of the constitutional amendment of December 1989 which had introduced the definition of Republic of Poland as “democratic lawful State.” Prof. M. Grzybowski (Jagellonian University) pointed to the process of standardization of political system in the Scandinavian countries. Pronouncements of J. Pruszyński, LL.D. (Institute of Law Studies, Polish Academy of Sciences) and Prof. F. Kjellberg contained the statement that while the Norwegian political system is generally legitimized by the nation, the successive Governments enjoy a changing support. Prof. W. Sokolewicz (Institute of Law Studies, Polish Academy of Sciences) and Prof. C. Smith defined the admissibility and limits of delegation of the legislative powers to executive agencies as a political problem which lacks a legal solution. L. Kański discussed the views of the Polish doctrine on validity of international legal norms in the Polish legal order, and the practice of human rights protection which is still far from creating a consistent and efficient system.

The next block of problems under the title “Political Parties and Pressure Groups” opened Prof. H. Valen's discussion of the Norwegian political system. In Norway, competitive party system is a constitutional principle. In the past, what was considered to be a full realization of that principle was the proportional electoral system which admitted even small parties to seats in the Storting. This led to political break up and instability of Governments. Today, six parties are represented in the Parliament. The post-war changes in Norway's social structure—considerable growth in the size of the middle class—resulted in changes in the sphere of forms and ways of social influence. Political parties lost much of society's trust ; what

increased instead was the political influence of the media, television in particular. This fact imposes new requirements on the “political class” and thus shapes it indirectly.

St. Gebethner, LL.D. (Warsaw University) delivered a paper on the formation of the party system in Poland. Having discussed the stages of disintegration of the former party system, he stated that today’s Poland is a special case of a State where the system of government functions without a definite party system. Discussing the changes that took place in the Sejm’s political spectre, St. Gebethner pointed to changes in alliances on the Left and between peasant parties, and also to political differentiation of the Civic Parliamentary Club. What should be the test of popularity of parties, among them also of many newly created ones that are still extraparlimentary, and thus the decisive element of formation of the party system, are fully free parliamentary elections. The local elections of May 1990, largely dominated by Civic Committees, failed to play that role, demonstrating instead the weakness of new parties. St. Gebethner expressed the opinion that transformations of the Polish political system, as of those in other post-Communist countries, are affected by the crisis of the institution of articulation of interests.

The discussion of the Norwegian political system was supplemented with pronouncement of G. Hernes from the Trade Unions Research Institute which concerned pressure groups. Beside the media, such groups complement the constitutionally defined scheme of the nation’s exercise of power through its parliamentary representatives. Organized pressure groups, numerous in Norway, participate in State decisions through consultations and experts’ opinions prepared for the Government, local authorities, and parliamentary commissions, to mention just one form of such participation. What provides an important foundation for this activity is the principle, formulated in the statutes of State administration, that the opinion of those concerned should be heard before a legal act is passed or amended. G. Hernes pointed to the advantages of a “double-track” political system where the citizens influence the political processes not only as voters but also as members of interest groups : the fact that opinions of the groups concerned are taken into account legitimizes the agencies that actually make the decision, and the steps and efforts (analyses, statistical studies, etc.) made by organizations in the process of preparation of that decision are a functional alternative to the solution where the State administrative machine is charged with such tasks,.

During the discussion that followed, H. Valen and G. Hernes provided additional information concerning the relations between parties and pressure groups. They stressed those groups’ particular activity at the local level, and also pointed to political parties’ inclination to win over the active leaders of pressure groups (e.g. of trade unions).

The subject to close the meeting was reform of the local government system in the two countries. Prof. F. Kjellberg from the University of Oslo discussed the evolution of that system in Norway in the 1960s—1980s, and stressed the profoundness of the recent reform which introduced a new division of functions between the central and the local level, aiming at flexibility, decentralization, integration as well as pluralism and democracy in communes. He pointed to the general values that are realized through the citizens’ participation in government on the local level, such as freedom, participation, legitimation, effectiveness. Situated closer to the citizen, the local government directly fulfils the principle of democracy, participates in defence of that citizen’s rights, renders political education possible and teaches local solidarity.

Discussing the Polish local government reform, M. Kulesza, LL.D. (Warsaw University) stated that the Act on local government is but the first stage of that reform : what is necessary for effective functioning of communes are new detailed provisions, and particularly arrangement and updating of the former regulation. What the speaker found to be the most important new elements of the system of local authorities is the fact that it has been based on the basal units ; abolition of political subordination and supervision ; and financial independence of the central administration. M. Kulesza discussed the arguments for and against the communes' economic activity that had been put forward during the parliamentary debate on the relevant bill. What speaks for such activity among others is the strategy of ownership transformations in Poland. Speaking of the prospects of functioning of local government agencies, M. Kulesza stressed the need to change society's approach to them.

With the aim to make the Norwegian guests understand the essence of the Polish self-government reform, a description of the Polish local administration in the past years was provided, the speakers defining it as based on Soviet models (M. Kulesza), centralized in order to facilitate industrialization (St. Gebethner), engaged in distribution of scarce goods and thus enjoying serious authority on the local scale which was often arbitrarily exercised (J. Pruszyński). Also discussed was the financing of local agencies in the two countries, that is problems such as relation of finances to the communes' tasks (T. Böhler, A. Fliflet, M. Kulesza) and transmission of the State's function of redistribution to the local level (F. Kjellberg, Prof. S. Zawadzki from the Warsaw University).

Closing the proceedings, head of the Institute of Law Studies J. Łętowski and Prof. C. Smith unanimously expressed their conviction that the lively discussion between the Polish and Norwegian lawyers, a proof of usefulness of the meeting, should be continued in the form of institutionalized scientific cooperation.

Ewa Popławska