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The Amendment of August 1926 to the first Polish Constitution of the Second Republic*

Abstract

On the political-legal plane, the direct consequence of the May coup organized by Józef Piłsudski in 1926 was an amendment of the March constitution of 1921. The above amendment was commonly referred to as the *August amendment* from the name of the month in which the two laws changing the constitution had been passed (2 August 1926). The core of the *August amendment* consisted in a strengthening of the position of the executive organs of the state at the expense of the Diet and the senate. The president obtained the right to dissolve parliament before the end of its term, following the motion of the ministers' council. Moreover, the president obtained the prerogatives to pass resolutions with the power of parliamentary laws and obtained new budgetary prerogatives. Parliament, on the other hand, became restricted as regards its powers to pass a no confidence vote towards the Ministers' Council or any individual minister. The political conceptions implemented by the interwar government aimed at doing away with the principle of a tri-partite division of state power in favor of a concentration of power in the hands of the state's president. The above conception had been fully realized in the new constitution of the Republic of Poland of 1935.

Key words: Constitution of the Republic of Poland of 17 March 1921, March Constitution, amendment of 2 August 1926, "August amendment", constitutionalism of II Republic of Poland, president of the Republic of Poland, executive power, authoritarianism

Słowa kluczowe: Konstytucja Rzeczypospolitej Polskiej z 17 III 1921 roku, Konstytucja marcowa, nowela z 2 VIII 1926 roku, „nowela sierpniowa”, konstytucjonalizm II Rzeczypospolitej, prezydent Rzeczypospolitej, władza wykonawcza, autorytaryzm

In the interwar period writers on the Polish constitutional law pointed to two goals of Marshal Piłsudski *coup d'état* of May 1926 – “moral sanitation” and a strong executive. Piłsudski himself proclaimed these goals in his key speech to the representatives of all the parties in the Sejm at a cabinet meeting on the 29th May 1926. Dr. Antoni Chmurski in his book “Nowa konstytucja” (“The New Constitution”) wrote:

* This article is an expanded version of a paper delivered at the organized by prof. Kazimierz Baran international conference: *Poland and Hungary in the interwar-time. Their constitutional systems and the court-applied law*, held in Cracow on 19–22 September 2011.

He saw moral sanation as his first and chief task, “Widespread thievery, committed with impunity, is the main reason why Poland is in such a sorry state today, i.e. poor and weak, both internally and in its external relations. First of all, the domination of selfish interest of individuals and parties, impunity in the case of abuse [of power] and other crimes... I have declared war on all crooks, rogues, murderers and thieves and I will not give up... My aim is to suppress fraud and pave the way for honesty.” About his second goal – the strengthening of the executive branch of government – Piłsudski said this, “the Sejm and Senate have too many prerogatives and it is necessary to give more rights to those who have been appointed to govern...” (...). Whenever called to justify his radical programme of actions Piłsudski would invariably point to the harmful usurpation of power by the Sejm, and especially the Sejm oligarchy, the domination of narrow party loyalties, and the general lowering of standards in public life. Of the two goals proclaimed by Marshal Piłsudski, one was moral, the other political. One envisaged a sweeping moral reform, the other called for a constitutional reform.¹

The quotations from Piłsudski’s speeches offer a fairly accurate picture of his and his followers’ intentions on the eve of the *coup* in May 1926. They believed that Poland was in need of sanation, i.e. a cure that would restore the health of its political system. In their program they planned to prevent the encroachments of the Sejm into the sphere of executive government and to alert self-serving politicians to the primacy of the general interest, or *raison d’état*. While that belief was not new, it was in early 1926 that Piłsudski and his followers became convinced that even a *coup* was not too high a price for getting the ailing state apparatus on the road of the necessary reform. Whether they were right in their judgment is matter of controversy. The debate has continued ever since the “events of 1926” and, like other disputes of this kind, is unlikely to end in an agreement.

Soon after the 1926 coup, lawyers working for the new regime prepared a draft of amendments to the 1921 Constitution. The Amendment of August 1926, as it came to be known after the month in which it was adopted, came into force on the 2nd August 1926.² Another bill strengthening the position of the president was passed on the same day. It empowered the President to issue decrees with the force of an act of parliament.³

The core objective of the Amendment was to strengthen the executive powers at the cost of those exercised by the Sejm and the Senate. First of all, it gave the President the right to dissolve Parliament before the end of term at the request of the Council of Ministers. He could do it no more than “once for the same reason”; the measure had to be announced and justified in a presidential address.⁴ This amendment replaced a clause in the 1921 Constitution which sanctioned the dissolution of Parliament when a motion to this effect gained the approval of 3/5 of Senate votes. Similarly, members of the Sejm could no longer decide on the issue of dissolution. According to the 1921 Constitution such a motion could be put to the vote and take effect when backed by 2/3 of at least half of the total number of deputies. The decision, if taken in the lower chamber, resulted in

¹ A. Chmurski, *Nowa konstytucja [The New Constitution]*, Warszawa 1935, pp. 5-6.

² *Ustawa zmieniająca i uzupełniająca Konstytucję Rzeczypospolitej z dnia 17 marca 1921 r. [Law on Amending and Supplementing the Constitution of the Republic of the 17th March 1921]*, (Dz.U. [Journal of Laws of the Republic of Poland], 1926, No. 78, item 442).

³ *Ustawa o upoważnieniu Prezydenta Rzeczypospolitej do wydawania rozporządzeń z mocą ustawy [Law on authorizing the President of the Republic to Issue Decrees with Force of Law]*, (Dz.U. 1926, No. 78, item 443).

⁴ Art. 4 of the *Ustawa zmieniająca i uzupełniająca Konstytucję...* [Law on Amending and Supplementing the Constitution...] which amended Art. 26 of the 1921 Constitution.

the dissolution of the Senate at the same time. In fact, the 1926 Amendment deprived Parliament of any right to influence the presidential decisions concerning its dissolution. According to the new procedure, the president needed only the cooperation of the government (the Council of Ministers), i.e. its formal request to dissolve parliament, before taking action. However, within the framework of reforms postulated by the “Sanation” movement, this requirement was a mere formality, or rather an attempt to create an impression that president’s freedom of action depended on other organs of the state. It may be noted here that the later adopted 1935 Constitution gave the President the prerogative of dissolving the Sejm and the Senate before the end of term.⁵

The Amendment of 1926 gave the Head of State the right to issue statutory decrees under two conditions.⁶ Firstly, his decrees had to be adopted at a time when both houses of parliament were dissolved, and they had to remedy “an emergency that affected the state”. Secondly, a law adopted by the parliament could authorize the president to issue decrees “over a period and within a scope indicated by that law.” Indeed, the latter condition was met that very day, when a piece of legislation authorizing the president to produce decrees was adopted alongside the amendments.

However, there were several fields normally subject to constitutional or parliamentary regulation that were exempted from the presidential decree⁷ – he could not intervene in the affairs of local government,⁸ the budget,⁹ the military,¹⁰ parliamentary control over the national debt,¹¹ matters of war and peace¹², ministerial accountability under the constitution,¹³ monopolies and customs duties, electoral law at all levels, laws concerning language, marriage, and, which may appear odd, anti-alcohol legislation.¹⁴

On the formal side, a presidential decree had to be based on the articles of the constitution and relevant parliament acts already in force. Moreover, it had to be preceded by an appropriate request from the Council of Ministers; the decree had to be signed by the president, the prime minister and all the ministers; and finally, it had to be published in the official *Journal of Laws* (“Dziennik Ustaw”). A presidential decree might become invalid in two cases – firstly, if it was not presented to parliament for approval within 14 days from the beginning of the parliamentary session following the issue, and second-

⁵ Art. 13 sec. 2 (h) of the 23 April 1935 Constitution (Dz.U. 1935, No. 30, item 277).

⁶ Art. 5 of the *Ustawa zmieniająca i uzupełniająca Konstytucję...* [*Law on Amending and Supplementing the Constitution...*] which amended Art. 44 of the 1921 Constitution.

⁷ Art. 2 of the *Ustawa o upoważnieniu Prezydenta Rzeczypospolitej do wydawania rozporządzeń z mocą ustawy...* [*Law on Authorizing the President of the Republic to Issuing Decrees with the Force of Law...*].

⁸ Art. 3 Par. 4 Constitution of 1921.

⁹ Art. 4 Constitution of 1921.

¹⁰ Art. 5 Constitution of 1921.

¹¹ Art. 8 Constitution of 1921.

¹² Art. 50 Constitution of 1921.

¹³ Art. 59 Constitution of 1921.

¹⁴ It is worthwhile to note that the limitations of matters in which the President could not issue decrees were listed also in Art. 5 of the *Ustawa zmieniająca i uzupełniająca Konstytucję...* [*Law on Amending and Supplementing the Constitution...*]; cf. footnote 6. Among the Articles of the 1921 Constitution within the scope of which the President could not issue the decrees, there may be found Art. 6 referring to financial matters. This Article was however left unmentioned in Art. 2 of the *Ustawa o upoważnieniu Prezydenta Rzeczypospolitej do wydawania rozporządzeń z mocą ustawy...* [*Law on Authorizing the President of the Republic to Issue Decrees with Force of Law...*] (other Articles that were listed remained unchanged).

ly, when it was presented as required but was rejected by the assembly. It is clear from a review of the specific legal clauses attached to the institution of the presidential decree that its use was subjected to a number of restrictions and conditions. This construction was intended to increase the effectiveness of the state apparatus without depriving the legislature of its key decision-making role in matters of paramount importance to the state.

The 1926 Amendment did give the President some competencies with regard to the budget. He could now promulgate the government's budget bill if the Sejm and the Senate failed either to adopt or reject it within the constitutional timetable.¹⁵

It should also be noted that other amendments restricted the powers of the Sejm to force the resignation of ministers or the Council of Ministers as a whole in a vote of no confidence. Under the new regulation, the motion of no confidence could not be put to the vote immediately, but it had to wait until the following session.¹⁶ The measure was aimed at shielding the government and individual ministers from being brought down by a rash and possibly ill-judged vote; the delay was introduced to give the members time to reflect coolly on ways of resolving the crisis. Furthermore, Article 22 of the 1921 Constitution which addressed the issues of conflict of interest and restricted public officials' private interests was expanded to include a penal sanction. It stated that a member found in breach of this law will lose his seat and forfeit "all the proceeds acquired from the government".¹⁷ Again the legislator's intention is clear: to install a strong legal deterrent to those officials who are tempted to use their position to receive government orders for their private businesses, an abuse all too common in any democracy.

More generally, the 1926 Amendment was intended as a first step towards a constitutional order which emphasized the unity of the state, or, in other words, a greater concentration of power in the hands of the president. It initiated a process of constitutional change which broke with the traditional tripartite division of powers. The shift did go unnoticed. As one of the leading parliamentarians of the interwar period Waclaw Makowski observed in a strongly-worded, sarcastic comment, made shortly before the adoption of the amendments in July 1926:

Society's interests must be taken care of by somebody who is appointed to do it, and who has all the necessary authority to head off any threats and to defeat those elements that may try to take over our system. These issues require prompt action. If such issues become the subject of lengthy deliberations, if the question is raised whether the problem comes within the purview of the legislature, and whether it needs to be debated, and whether it is necessary to discuss what has been happening in one village or another, and whether an official treated a member of parliament with less than due respect, the prestige of parliament will be upheld, but the most vital issues of state will be neglected. That is why we need to work out a separation of powers on a different level, a separation between the legislature whose job is to give broad directions, and the acting executive which must be equipped with each and every prerogative it needs to deal with the urgent issues brought up by the life itself. [...] Montesquieu is a venerable old man, an old man whose time has passed.

¹⁵ Art. 3 of the *Ustawa zmieniająca i uzupełniająca Konstytucję...*, [Law on Amending and Supplementing the Constitution...] which amended Art. 25 of the 1921 Constitution.

¹⁶ Art. 6 of the *Ustawa zmieniająca i uzupełniająca Konstytucję...*, [Law on Amending and Supplementing the Constitution...] which amended Art. 58 of the 1921 Constitution

¹⁷ Art. 2 of the *Ustawa zmieniająca i uzupełniająca Konstytucję...*, [Law on Amending and Supplementing the Constitution...] which amended Art. 22 of the 1921 Constitution.

To solve our problems, we must use the tools adequate to the challenges of modern life, not those from Montesquieu's intellectual kit.¹⁸

The 1926 Amendment paved the way for a new constitution of the Republic of Poland, which was adopted on the 26th January 1934 and which came into force on the 23rd April 1935. In 1931, its author, Stanislaw Car, summed up the functioning of the March 1921 Constitution (with the 1926 amendments) as follows:

Since May 1926, when new *raison d'état* was introduced, it has been possible to curb the squandering of the state resources and start cleaning up the mess. Many of the abuses that had flourished in the old epoch of "Sejmocracy" have been uprooted; parliamentary life has been liberated from the tyranny of senior members' meetings; the flux of unending sessions has been replaced by orderly procedure within a timetable set down by the constitution; the laws that guaranteed the president the exclusive right to appoint and dismiss the government have been restored; parliamentary immunity, which must not be seen as a license to act with impunity, but a public law protection enjoyed by members of parliament in pursuit of their duties, has been scaled back to its proper constitutional frame; and finally, the 2 August 1926 Amendment made it possible to have the budget passed in time, to dissolve the Sejm, and generally to get things done by a presidential decree which had the force of an act of parliament.¹⁹

And he continues: "[...] the 2 August 1926 Amendment is just a first step on the road to the implementation of the programme of the post-May 1926 government [...]. The direction of the reforms has never been a secret. They are motivated by the need to establish a strong executive that would secure to our new state a steady and glorious development and would raise Poland to the rank of great powers, ready to face down any threat to its sovereignty. The new government knows that the realization of these objectives is impossible without a shift in the constitutional balance in favour of the President's office. The extension of presidential executive powers is consistent with the democratic system and respects the parliamentary right to a reasonable, fact-oriented supervision of government work."²⁰

The constitutional change inaugurated by the 1926 Amendment is believed to have pushed Poland closer to a group of nations whose political system was based on 'authority'. The Polish version of authoritarian rule (or "Caesarism", as it was often called), formulated by the ideologues of the movement headed by Marshal Piłsudski, envisaged a concentration of state power in the hands of the executive, i.e. the office of the president. Although the post-1926 system had many flaws and the way it worked in practice attracted a lot of criticism, its adoption did not turn the interwar Republic of Poland into an authoritarian state, as it is sometimes claimed. In Poland, the constitutional order was respected; so were the fundamental democratic principles as well as human rights and

¹⁸ W. Makowski, *O naprawie konstytucji po raz drugi – zmiany. Przemówienie sejmowe z 17 lipca 1926 r.* [The Improvement of the Constitution Rediscussed. The Question of Amendments. The Speech Delivered in the Sejm on 17 July 1926] [in:] *Wacław Makowski o państwie społecznym* [Wacław Makowski on the Social State], ed. W.T. Kulesza, Warszawa 1998, pp. 77–78.

¹⁹ S. Car, *Naprawa ustroju – koniecznością państwową. Mowa wygłoszona na plenarnym posiedzeniu Sejmu w dniu 3 marca 1931 r.* [Constitutional Improvement as a Necessity for the State. The Speech Delivered at the Plenary Sejm Session on 3 March 1931] [in:] *Stanisław Car – polska koncepcja autorytaryzmu* [Stanisław Car – the Polish Concept of Authoritarian System], ed. J.M. Majchrowski, Warszawa 1996, p. 71.

²⁰ *Idem*, *Konstytucja 17 marca a polska rzeczywistość* [The 17th March Constitution and the Polish Reality], Warszawa 1930 [in:] *ibidem*, p. 55.

liberties of the citizens. The contrast between the allegedly authoritarian Polish political system and the authoritarian regimes of the neighbouring states, Hitler's Germany and Stalin's Soviet Union, could hardly be more striking. It was that very neighbourhood that in a way elicited the Polish reaction, which, arguably, could hardly have been different. In order to survive – insisted the politicians that came to power in 1926 – Poland had to be strong and had to have a well-functioning, efficient political system. Adam Skwarczyński, a leading ideologue of the Sanation reform camp, put it this way:

Political systems and constitutions can be grouped in many different ways. Let me therefore introduce yet another classification, between those constitutions that are easy and those that are hard. Constitutions that have not given a wide berth to the ancient regime under which there was little difference between the citizen and the subject, belong to the former category. Equally easy are the well-known democratic constitutions drafted to please the masses. Neither one nor the other requires any effort of cooperation on the part of the citizen. Instead they assume his passivity which comes in two forms, a passive obedience in the face of authority or a readiness to follow the call of the propagandist. The Polish constitution is going to be hard. It puts the citizens to the test and it enforces a selection resulting from constant exertion – exertion which is not rewarded by a direct personal gain. (...) The hardness of the Polish constitution matches the discomforts of our geographical and cultural position; it demands from a Pole an unwavering commitment to the public good; it presents Poland with a recurring choice, the country can either be strong, or it will become an easy prey to its neighbours.²¹

Unfortunately, recent history has shown that Poland could not or was not able to withstand in confrontations with totalitarian neighbours. The reforms of the parliamentary system, set in motion in 1926 and carried on with remarkable persistence, did not prevent Poland's defeat in September 1939. This shows that even a well made constitutional system, perfectly suited to cope with one set of circumstances cannot win with larger historical processes. Nor can it ensure nation's prosperity. Ultimately, regardless of the excellence of their laws and constitution, the fate of nations and states depends on the character of the individual people who are in power and make the crucial decisions. This is the lesson history has taught the Poles repeatedly over the last centuries.

²¹ A. Skwarczyński, *Doświadczenia społeczne a konstytucja* [*Social Experience and the Constitution*] [in:] *Adam Skwarczyński – od demokracji do autorytaryzmu* [*Adam Skwarczyński – from Democracy to Authoritarian System*], ed. D. Nałęcz, Warszawa 1998, p. 227.