Still strong? Evolution of President’s powers in the context of constitutional change in Finland and Poland

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Introduction

Despite territorial proximity, Finland and Poland are not often a subject of comparative analysis by political scientists or constitutionalists. It seems a bit strange if we consider the fact that both countries were given the right to self-determination at the same time and that they both have undergone very similar path of constitutional reform. On the other hand we need to remember that Poles and Finns have had almost no common historical experiences and it is difficult to talk about the penetration and mutual influence of specific political arrangements. Most of all, we will try to prove that a number of those differences are insignificant and, taking them away, today Finland and Poland are easily comparable in regard of the model of presidency.

Particularly Finland has periodically been referred to as semi-presidential, the same to a much lesser extent applied to Poland. We would like to touch upon this, as the key to understanding the chosen governmental system lies almost exclusively with the model of presidency. It is not our intention to provide an extensive theoretical approach to the problem of choosing a governmental system, yet alone analyse semi-presidentialism as such. Instead, we would like to introduce a broad, comparative historical and legal analysis and demonstrate how the President in these two constitutional systems evolved into the current position. Secondly, whether according to the constitutional framework and certain aspect of political practice, does he still retain his strong position within the system, particularly in view of the most recent constitutional shifts. This will lead us to the last conclusion, whether these changes can influence perceiving both states as semi-presidential and how the two systems correspond to each other.

One of the key problems is trying to set together different empirical data resulting from fluctuations in legal shapes of the two systems. We have to take into consideration the continuity of system evolution in Finland along with two major shifts of the system in Poland, first after World War II, secondly after the fall of the communist rule in 1989. As a result the
presented analysis will mostly focus on current situation in view of the general tendencies in Finland since 1919 and in Poland since 1992.

The most important part of our paper will, inevitably, focus on the current constitutions of Poland from 1997 and Finland from 1999. Most importantly, only two years between adopting these texts allows us also to compare experiences of both countries in a similar period of constitutional practice. The conclusions of this review is interesting mostly as far as the democratic transition in Poland is concerned. We would also like to note that the presented outline of competence of both organs does not include all the ascribed powers but rather focuses on key functions and similar problems shared by both systems.

**Origin of the institution of President in Finland and Poland**

The first independent statehood traditions of Finland do not extend further than to the early twentieth century. Although since the sixteenth century the official name of the country was ‘the Grand Duchy of Finland’, which emphasized the unity and distinctness of the territory, in terms of political system it remained an integral part of the Kingdom of Sweden, without any independent institutions. The situation did not change significantly after taking control of Finland by Russia in 1809. It was not until the second half of the nineteenth century, that period of growing autonomy was initiated, although the reforms have been gradual and limited. The Russian emperor was not going to give up the power over Finland. In the absence of their own experience Finnish constitutional law theory has been formulated in a strong commitment to personal rule referring to the position of the monarch, first Swedish and later Russian. In fact the only parliament – *Eduskunta*, established in 1906, was a body with a strong popular legitimacy and expressed interests of the broad masses of the nation during the process of building the structures of an independent state in the final period of World War I. The form of the new system had to provide a place for a strong Head of state.

In contrast to Finland, Poland had a long tradition of independent statehood. It was a democratic tradition, based on the sovereignty of the Nation, although the concept of ‘nation’ had been defined slightly differently to the modern understanding, and back then limited to nobility – the only social group with full political rights. Albeit Poland had adopted a monarchical form of state already in the tenth century, kings never had such liberty as their counterparts in other European countries. Polish political system before the collapse in the end of eighteenth century, was compared to the ‘republic’ in the ancient sense. Also during

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the loss of independence period, a strong power of the Head of State met with resistance on Polish territory divided between Russia, Germany and Austria\(^7\).

Despite the mentioned differences, the international political context at the beginning of the twentieth century caused that the course of events in both countries followed a similar scenario. The military situation on the fronts of World War I and the revolution in Russia gave the two nations an opportunity to realize dreams of freedom.

Finland was entering the period of independence with at least partly shaped system of supreme authorities. It is symptomatic that exactly the *Eduskunta* did make a formal declaration of independence. However there was no consensus on the economic and political regime of the new state. The controversy was so sharp that it resulted in a Civil War in 1918. Parliament, dominated by representatives of the winning camp – the ‘White’, adopted the Swedish Constitutional Act 1772 as a basis for political discussion. It meant that Finland remains a monarchy. But the decision of the Regent – P.E. Svinhufvud on the alliance with the Central Powers and offering the crown to Frederick Charles (the brother-in-law of the Emperor of Germany) proved incorrect. The victory of the *Entente* strengthened the advocates of the republic. In the new parliament, elected in March 1919 with the task of adopting a new constitution, they won three quarters of all seats. Monarchists were obliged to accept the defeat, but they focused their activities towards to guarantee strong powers for elective Head of state. This concept was not only a reference to constitutional tradition and its continuation, but also aimed at stopping the radical sentiments. The fear of revolution and the recent memory of the Civil War also spoke to the other side of the constitutional dispute\(^8\). As a consequence the Constitution adopted on 21\(^{st}\) June 1919 and officially signed on 17\(^{th}\) July 1919, established an original system with very large domain of personal authority of the President, who became the most important institution in the state.

The process of building an independent Polish state after World War I was more complicated. It was necessary to join three parts of territory, which had functioned in three different political systems for more than one hundred and twenty years. There was no uniform structure of authorities, no representative body and the whole process of taking control by Polish people was advancing with different dynamics. In various parts of country, separate institutions were created to organize Polish authority after the withdrawal of German and

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\(^7\) The first Polish battles against the Russian Emperor in 1831 and against Austrian Emperor in 1846 had very limited support from the nobility. The next attempts to fight for the independence included also the other social groups.

Austrian troops. Polish history recognizes the symbolic takeover of military power by J. Piłsudski on 11th November 1918 as a date of independence. In the following days the consecutive bodies and institutions submitted to Piłsudski, who had assumed the title: ‘the Provisional Chief of State’\textsuperscript{9}. His personal popularity, strengthened during the battles of borders and the success in war against Soviet Russia of 1920, was a key factor in stabilising structures of the young state. On the other hand this popularity became a significant obstacle in accepting a concentration of power by an individual.

Despite the territorial division and the absence of representative bodies, the structure of political parties was well developed. J. Piłsudski, not associated with any of them while having support of the army, was seen as a threat to the young democracy. These anxieties led to the decision to adopt a parliamentary regime rather than a presidential one. Republican form of the new state remained outside the discussion, but even political forces, ideologically tied to a strong personal power of Head of state, gave up on implementation of these demands, expecting who was the natural candidate for this function\textsuperscript{10}. As a result the Constitution Act adopted on 17th March 1921 and called the ‘March Constitution’ gave the President very limited powers. Bicameral parliament was located in the centre of the of state structure. This was the only institution entitled to legislate and control the government.

The two republics, which had appeared on the map of Europe at the same time, decided to build political systems with different position of Head of state. But not only the letter of constitution differed Presidents of Finland and Poland. The political practice and historical events caused that the development of this institution followed completely different directions.

**The evolution of the President’s position in the Finnish constitutional system**

The political and constitutional history of Finland is often characterized by distinguishing three periods: The First Republic in nineteen-twenties and -thirties, the Second Republic 1944-1982 and the Third Republic since 1983\textsuperscript{11}. In long political cycles the position of Head of state oscillated from one extreme to the other depending on party configuration,
the progress of events and the personal capacity of the office holder. The First Republic was determined by a combination of patrimonial presidency and parliamentary elite cooperation. It is worth mentioning that during whole this period – until the fifties no sitting president was re-elected. However during these twenty years it was possible to observe the growth of President’s position and the strengthening of his personal powers. The first office holder – K.J. Ståhlberg understood his constitutional role primarily as an arbiter and regulator. On the other hand unstable political situation and short life-span of governments didn’t enable him to fully exercise the powers by President.

The importance of the Head of state increased during World War II and especially after the end of military operations in 1945. The new President, elected in 1946 – J.K. Paasikiv redefined the separation of powers between the Head of state and the government. He changed the interpretation of Art: 33 of the Constitution of 1919: “The President shall determine the relations of Finland with foreign powers” and reading it literally, reserved whole foreign policy as a personal prerogative of President. His successor maintained the same interpretation and the foreign affairs became the main sphere of President’s activity. Simultaneously, the Head of state withdrew from the current internal politics, leaving it to the government.

This clear share of interests and responsibility inside the executive power remain an axis of politics until the late eighties and the beginning of nineties. The most of this period the office was occupied by U.K. Kekkonen who dominated the political arena. He used his presidential regulative powers in a very personal way: he selected Prime Ministers, pushed parties into coalitions, forced governments to resign, appointed non-partisan presidential cabinets and dissolved parliaments. The President became the highest regulator and guarantor of consensual national politics. Finland in Kekkonen’s era (1956-1982) reached the peak of the President’s supremacy, being often compared to the Fifth Republic of France and gained recognition of a fully developed semi-presidential system.

The assumption of office by M. Koivisto began the period described in Finnish political literature as Third Republic. There is no consent if this period has already finished and if yes, what date should be pointed as the threshold. Some political scientists claim that the adoption of the New Constitution in 1999 or its coming into force in 2000 is such an

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important political event that it is impossible to pass over it in silence. Others emphasized that the changes written in the Constitution of 1999 have been only a consequence and continuation of the process which had started in the ninety-eighties. The way in which U.K. Kekkonen used his powers arouse the objection of Finnish political elites. Therefore, M. Koivisto’s presidency contained contradictory tendencies. As a former Prime Minister for many years he refused to take advantage of his popularity in order to create an extensive charismatic leadership, but withdrew resolutely to traditional institutional positions. The new style of his presidency let the government to take leadership within the executive power, however the turn happened without changing the letter of Constitution.

This process was very closely tied with crucial changes in domestic and international situation. The first was stabilization of party politics in Finland. In the ninety-eighties the electoral volatility in party systems decreased and three parties strengthened their dominating position at the same level – approximately 23% of votes. Simultaneously, the collapse of Soviet Union made foreign policy of Finland independent and took the President, traditionally responsible for good relationships with the powerful neighbour, a pretext to interfere also in current internal politics. The new course of international policy and decision about membership in the European Communities required continuous involvement in European affairs. Therefore, this task was reserved for the government with a silent acceptance by the President. The logic of these changes seemed natural due to the character of the sphere of European policy which integrates the question from both internal and international policies and extorts a coordination of all of them in decision-making.

Following years brought next changes that weakened the President. However, one amendment to the system significantly influenced his location in the political system. The introduction of direct popular vote in 1991 made the holder of presidential office more independent from party leaders in parliament. On the other hand, a mechanism of electoral

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16 Ibid.
18 An example of direct interference of the President in internal policy was the situation know as ‘Night Frost’ crisis in June 1979. President U.K. Kekkonen used the Russian Ambassador’s objection to the proposed shape of the cabinet coalition in order to enforce his own vision of the coalition. See: D. Arter, *From Contingent Party System to Party System Convergence*, „Scandinavian Political Studies”, 2009, vol. 32 no. 2, pp. 229-231
19 It was a political testament of M. Koivisto to reform a system foreign-policy decision making and give the responsibility in European affairs to the government. J. Nousiainen., *Finland: The Consolidation of Parliamentary Governance*, [in:] W.C. Müller, K. Strom (eds.), *Coalition Governments in Western Europe*, Oxford University Press, Oxford 2000, p. 102.
campaign required big financial and organizational resources, nearly impossible to get without party background. Presidency was distanced from organizations and elites and came closer to the electorate. Very strong political legitimacy – direct from the Sovereign – gave the Head of state new impulse to play a significant role in the political system. At the same time the traditional monarchic legitimacy was considerably weakened. Competing for votes in electoral campaigns, candidates decided to set populist slogans. This way much of the traditional mysticism of the presidency was lost.\(^\text{21}\)

**The evolution of the President’s position in the Polish constitutional system**

The political development of Polish presidency was very strongly determined by history, both domestic and international. The first short period began and ended very dramatically. G. Narutowicz elected in 1922 by joint chambers of Polish parliament (*Sejm* and *Senat*) was murdered only two days after taking the office. The term of his successor, S. Wojciechowski, was interrupted by a coup d’etat in May 1926. Followers of J. Piłsudski, responsible for the coup, entrusted their leader the presidency but the former Chief of State refused due to inadequate authority of the office. Simultaneously, he designated the official candidate I. Mościcki, who remained President till World War II.

Presidential power was strengthened in 1928 by amendments to the March Constitution giving the Head of state the share in legislative powers and the authority to issue decrees. Political program of the group which took control in 1926 was to locate the President, a role in which they saw Piłsudski, in the centre of the political system. Significant constitutional reform was introduced only in 1935, shortly before Piłsudski’s death. The new Act, called the April Constitution, rejected the notions of ‘sovereignty of the Nation’s rule’ and the ‘tripartition of powers’. In their place it introduced the supremacy of state interest that was expressed by the President, held responsible only to God and history. The other institutions were subordinate to the Head of state, who received very broad competence to nominate public officers and even part of members of the second chamber of parliament. He was able to appoint a successor candidate; this candidate took the office if it was impossible to organize the election.\(^\text{22}\) This authority turned out very practical in case of war. It enabled to retain the integrity of the state institutions after Nazi Germany and Soviet Union took control

\(^\text{21}\) J. Nousiainen, *From...*, p. 103.

over the territory of Poland in 1939. Polish President and government functioned in exile until 1990.

During this period Poland was occupied by Germans and finally by Russians. J. Stalin decided to set up a communist dictatorship using some of the groups which were active in the fight against Nazis during World War II. Communist party made their own organizations which imitated Polish constitutional institution. They did not accept the April Constitution and based on the former Act from 1921. This strategy set out to obtain legitimacy for new authorities but it was impossible to retain such a democratic act in the totalitarian system. The President’s office was restored officially on 4\textsuperscript{th} February 1947, although B. Bierut used the title of ‘President’ for almost two year before his election\textsuperscript{23}. Two weeks later – 19\textsuperscript{th} February 1947 Sejm (the parliament reduced to one chamber only) adopted significant amendments to the March Constitution. The Act was called the (Second) Small Constitution\textsuperscript{24}.

The process of building the totalitarian system was finished by adopting a completely new constitutional act on 22\textsuperscript{nd} July 1952. It changed the official name of the state\textsuperscript{25} and introduce different institutional structure, whole of which was subordinate to the parliament. It introduced a new organ, known in Soviet constitutional doctrine: the Council of State\textsuperscript{26}. At first (in 1947) it limited the real authority of the President and in the next years (since 1952) replaced him as a collegiate Head of state. The importance of this institution was primarily symbolic\textsuperscript{27}. The main task of the authors was to break Polish independent constitutional tradition.

However, the communists policy proved to be inconsequent. During the economic and political crisis of late eighties a concept to restore the presidency was formulated. The main idea was to consolidate political powers of the communist leaders, especially in face of possible negotiations with democratic opposition. The strategy to legalise part of the opposition and share responsibility for the economic situation needed a guarantee of political supremacy of the Communist Party – United Polish Workers’ Party. The function of guarantor was prescribed for the President. During the round of negotiations between the

\textsuperscript{23} The full title of his office was: President of the State National Council.

\textsuperscript{24} In Polish constitutional tradition the term ‘Small Constitution’ (In Polish: ‘Mała Konstytucja’, also translated as Little Or Minor Constitution) refers to the partial constitutional reform in form of one constitutional act which regulates the relations between highest state organs. So far Poland had three acts of this kind: in 1919, 1947 and 1992.

\textsuperscript{25} The formal name of the state from 1952 to 1989 was: The Polish Peoples Republic.

\textsuperscript{26} It needs to be distinguished between the Council of State in the Polish Peoples Republic (1952-1989) and the formal Finnish constitutional term State Council referring to the government according to the Constitution of 1919.

\textsuperscript{27} The authority of the Council of State was described in art. 25 of the Constitution of the Polish Peoples Republic of 1952.
Communists and the opposition – called the Round Table – it was decided on changing the Constitution of 1952. The opposition claimed to restore bicameralism by re-introducing the Second Chamber – the Senat along with free elections to this chamber. The price for this was to agree to restore a strong President. The conclusions of the Round Table went into force through the constitutional amendments adopted on 7th April 1989.

The President received the function of the highest representative of the Polish state in both domestic and international arena and guarantor of sovereignty and security of the state. He was able to nominate the government and set a veto to acts of parliaments. The office of President and the scope of his powers was created especially for the Secretary of the Communist Party – W. Jaruzelski. But the political situation changed after the general election of 4th June 1989. As a result of glorious victory the democratic opposition got a chance to create its own government. The resistance of the Communist party was strong but finally both sides agreed on the compromise. T. Mazowiecki became the first non-communist Prime Minister in Central and Eastern Europe after World War II and W. Jaruzelski was elected President. The silent revolution, which started in June 1989, went on very fast. In December 1989 the Sejm adopted the next amendment to the Constitution. It was recognized as the end of the communist era in Polish history. The President’s office was integrated in the process of political transformation and we can recognize him as a symbol of that process.

The next step of the development of the position of the Head of state was strongly connected with the process of the ‘Solidarity’ movement disintegration and members of the former democratic opposition. Political environment of its leader – L. Wałęsa proposed to implement direct election of the President. He won the vote and in December 1990 he was appointed to the office. It was combined with a symbolic ceremony of conveying the insignia of the authority by the last émigré President. The direct popular voting gave the Head of state very strong political legitimacy. Additionally, the personal ambitions of office holder – L. Wałęsa affected the way of performing his function. The President was a very active actor of

28 W. Jaruzelski, a general, the sitting First Secretary of the United Polish Workers Party and the person responsible for introducing martial law in 1981 (in order to regain control over rapid pro-democratic movements) was chosen according to an unofficial agreement between the communist party and the opposition. It was expressed in an article entitled „Wasz Prezydent, nasz premier” (Your President, our Prime Minister), which meant that the opposition agreed to vote for the communist presidential candidate in exchange for taking the government. The compromise was upheld and as a result Jaruzelski took office in 1989. However, the fast democratic transition processes quickly erupted in both the former opposition elites as well as in the society, with a blow against the President. General Jaruzelski was perceived as a remnant of the former system and his choice as contradictory to the society’s political preferences.

29 Wałęsa’s political wing feared a vote in the parliament, where he did not find supporters, and at the same time felt confident in getting support of the People. See: I. Mcmenamin, *Semi-presidentialism and Democratization in Poland*, “Working papers in international studies”, Centre for international studies of Dublin University, 2/2008, p. 3.
domestic politics, getting involved in political conflicts and partisan politics. He also took part in foreign policy initiatives.

The transformation from totalitarianism to democracy had to be reflected in the constitutional act. The working of new form of political regime did not bring the full consent and the special commission recommended at first only limited constitutional amendments. This project, called the (Third) Small Constitution was adopted on 17th October 1992. Simultaneously, parliament decided on the way how to complement constitutional reform. The authors of the Small Constitution intended to adjust legal norms to the stabilized practice. As a result of this Act the regime has been described as semi-presidentialism. It is necessary to emphasize a temporal character of this document. The special constitutional commission to prepare a project of a complex new constitution continued its work. They were finalized at the beginning of 1997 when the New Constitution was adopted by parliament and later by the voters in referendum. This Act sorted out the question of political system in favour of parliamentarism. This concept was a reaction for political crises during the presidency if L. Wałęsa (1990-1995). His successor A. Kwaśniewski supported the direction of proposed evolution. New Constitution came into force in October 1997.

Review of the current constitutional powers of the President in Finland and Poland in view of the political practice

In the Polish case the Constitution of 1997 has been amended only twice until 2012. None of these amendments so far have been aimed either at the President nor any competence areas covered by the President’s prerogatives. In the meanwhile the Finnish Constitution, although two years younger, has been amended three times, with a much greater depth of the modifications. One of these touched upon the President of the republic through art. 58, regarding the constraints set upon the Head of state in regard to the inter-executive relations between the President and government. Nevertheless these changes are of a more technical character and do not re-shape any substance of the President’s competence.

Under the Polish Constitution of 1997, in this respect basing on the previous Small Constitution of 1992, the President is the highest representative of the Republic of Poland and the guarantor of state power. It is his role to ensure the Constitution is being followed, he guards the sovereignty and safety of the state and its territorial integrity. The Finnish Constitution of 1999 does not give any general description of the President’s function or particular notions held in regard to the office. Chapter 5 art. 57 ‘Duties of the President’
declares only that the President “carries out the duties stated in this Constitution or specifically stated in another Act.”

The new constitutions of Poland and Finland, to an extent, put forward the President by applying separate chapters to the description of the Heads of state. In both cases the President is situated within the executive, according to both the Polish (art. 10) and the Finnish Constitution (art. 3) the executive power is shared by the President and the government. In contrast to the government, however, the President does not need to hold confidence in the parliament, a clearly formulated requirement in Finland. In the Finnish Constitution the chapter which describes the President also contains provisions regarding the government, while the chapter dedicated to his Polish counterpart is focused solely on the Head of state.

Clearly one of the principles of the Finnish constitutional reform of 1999 was to re-formulate the position of the President among other state organs, partially restricting his powers and forcing to cooperate with the government\textsuperscript{30}. This is especially visible when looking at the construction of the chapter, in which both the President and government have been merged into. In the previously adopted solution the supreme executive power has been vested in the Head of state, creating a strong dualism in the executive. Through the words of the New Constitution the President has lost the key power in appointing the Prime Minister for the benefit of the parliament, as well as ministers, who are now appointed strictly according to the PM’s proposal. The same principle also resulted in reducing the power to recall ministers only to the formal confirmation of the vote of no confidence\textsuperscript{31}. Therefore, his role of the main conductor in the government formation has also been reduced significantly.

Putting together the President and the government in one chapter, rather than introducing the Head of state in a separate one, is a clear indication of the will to constraint the President’s competence in favour of the government. Apart from the four mentioned areas in art. 58\textsuperscript{32} all the President’s powers are conducted in cooperation, or on the initiative from the Government.

The President of Poland performs his duties on five-year term and can be chosen only twice, out of citizens over 35 years of age. The current and former constitution adopted a

\begin{itemize}
\item The second situation in which President can recall the minister is his or her own demission. \textit{Ibid}, p. 221-222
\item These are: appointment or resignation of a minister/government, ordering extraordinary parliament sessions, matters referring to the autonomy of the Aland Islands and the presidential pardon/matters concerning private individuals.
\end{itemize}
popular, equal, direct and secret vote in the presidential elections. The Finnish President is chosen for a six-year term, also with a limit of two terms. The minimum age requirement is, compared to Poland, exceptionally low at 18 years. Native-born citizenship is required from the candidate, an element not present in the Poland. In both the Polish and Finnish case the candidates need to obtain an absolute majority in the elections, should they fail to do that a second round needs to be held two weeks after the initial voting. Also in neither case does the Constitution provide a vice-President as in the American model. In a situation when the President is unable to carry out his duties, they are being taken over by the PM (Finland) or the Speaker of the lower house of parliament (Sejm) in Poland.

The peculiarity of the chosen model, which makes both states an interesting subject of study in the first place, lies within the direct, popular election which gives the person holding the office particularly strong mandate in the society, yet with somewhat limited powers in comparison to a presidential system of government. According to J. Ciapała the idea to introduce a popular vote in Poland came during the session of the Round Table negotiations in 1989 and was put forward by the opposition parties without being backed by a firm concept of the office. The compromise worked out during that time indicated the election by the National Assembly, a formal joint sitting of both chambers of Polish parliament – Sejm and Senat, was immanently provisional. The confirmation came in 1990 when President W. Jaruzelski, chosen by this body, in response to a growing popular demand to make the presidential vote more democratic, declared the possibility of stepping down from his office and holding a popular election of the new President. His decision led to the first popular vote in 1990 bringing L. Wałęsa, the former leader of ‘Solidarity’ into the office.

From time to time it is questioned whether the President, not holding personally the core of the executive power, should have such a strong mandate. Secondly, media join this critic by putting into question the costs of the presidential elections, only one of which so far has resulted in the candidate winning in the first round. Today it is often noted in the doctrine, that the popular vote became a consolidated element of the Polish system of government and introducing an indirect vote by moving this power to any kind of elected body would be a significant step back depriving the Sovereign of its prerogative, or even more vividly put –

34 J. Wiatr, Prezydent..., p. 36.
an anti-democratic act\textsuperscript{37}. Despite this some theoretic works questioning some elements of the current constitutional order have appeared\textsuperscript{38}. Nevertheless, most scholars, both in constitutional law and political science, as well as political commentators, are unanimous in noting that there is no constitutional moment to introduce significant constitutional amendments\textsuperscript{39}, in other words a proper time and clearly expressed need for change\textsuperscript{40}.

In comparison, Finland introduced an indirect vote in the Constitution of 1919 and held nine elections between 1925 and 1982 according to this principle. In 1988 the first substantial modification came with introducing a double elections: direct voting as main and indirect as a back-up form of candidate selection. Another reform, setting a clear standard of direct choice came already in 1991 (went into force with the elections in 1994) and was subsequently incorporated into the Constitution of 1999.

Ideas similar to the ones expressed today in Poland seem to stand behind this solution in the Finnish case. As J. Nousiainen explains: “The introduction of direct election (...) reinforced the legitimacy of the presidency by conferring on the elected person the immediate support of the People, without the need for party bosses to act as middlemen.”\textsuperscript{41} Interestingly, this design causes little controversy in Finland, probably due to the fact this type of election has rooted itself deeply into the system as well as into the minds of the voters. The opinions reflecting the somewhat contradictory elements in the constitutional regulation with regard to the presidential elections so far do not openly criticise the election method\textsuperscript{42}. Similarly to Poland, a constitutional review was planned in ten years of the constitution's acting. The constitutional committee did not reach consent on the need to introduce any significant amendments to the text of the Constitution of 1999.

The Polish Constitution of 1997 enumerates in a closed list thirty areas of power, execution of which does not need a countersignature of the PM. A similar list, consisting of only four provisions in which the motion from the government is unnecessary, is presented in the Finnish Constitution of 1999. Though the remainder seems to indicate a much stronger position of the Polish Head of state, a closer look allows to notice that his Finnish counterpart


\textsuperscript{40} Although the authors of the constitution have overseen the need for change in approximately ten year, which should come in 2007, nothing as that has happened so far and the constitution is coming into its fifteenth year without any substantial changes.

\textsuperscript{41} J. Nousiainen, \textit{The Finnish...}, p.8.

\textsuperscript{42} P. Paczolay, \textit{Comments...}, p. 5.
shares a similar facet of exclusive competence which are taken out of other sections in the Constitution. Moreover, the majority of the presented areas are of a creation/nomination kind and as such are bound with the preliminary decision taken by the government.

A limitation of the presidential power came through the letter of the Polish Constitution of 1997\textsuperscript{43}. The adopted solutions have been a result of the clashing principles represented by the approach towards the first free-elected President L. Wałęsa. He and his political allies voiced out a need to remodel the system into full presidentialism basing on the American governmental system. Wałęsa’s opponents, fearing concentration of power in one hand, leaned towards fully-fledged parliamentarism. The result was a compromise, nevertheless leaning towards the latter\textsuperscript{44}. The Polish President has been reduced of the possibility to convene and hold government sittings, as well as the obligation to be informed on fundamental problems on which the government is working. A form of intra-executive cooperation between the government and President has been introduced into the 1997 constitution, taking the shape of a Cabinet Board (Rada Gabinetowa). This body is a sitting of the members of government under the leadership of the President. However, the Cabinet Board does not hold the same powers as the government, although it gives the President a possibility to influence the decision making process in the executive.

A partially similar construct is present in the Finnish constitutional practice. Under the Constitution of 1919 most of the President’s executive powers was carried out through the State Council – joint cabinet sitting directed by the President. All executive decisions of the President had to be formally performed and accepted both by the Head of State and the ministers. Moreover, the same logic applied to the decision of the government, which had to find acceptance with the President. This construct did not appear in the Constitution of 1999\textsuperscript{45}, though the joint sitting of both organs of the executive branch have been practised. These sittings are less frequent and they reflect only the areas in which the President is active or most crucial matters regarding current policy.

The president of Poland remains the highest representative of the state, but in the area of foreign relations his competence is drawn mainly from the fact he stands for the state’s authority and does not find realisation through equipping him with decisive powers. This is reflected through enumerated tasks: ratifying and renouncing international agreements (after notifying the parliament), appointing Polish representatives abroad and accepts credentials

\textsuperscript{44} One should note for example the strengthening of the PM by adopting a constructive vote of non-confidence.
\textsuperscript{45} The Constitution of 1999 does not apply the term State Council. The only official term used now is the government.
from foreign diplomats. The Small Constitution of 1992 pointed the President as the highest representative of the state in international relations, a phrase which did not find its way into the current text in favour of ascribing this prerogative to the government.

The role of the President in the foreign relations has been at times an ignition point in both Finland and Poland. The President, as a constitutional organ, is subjected to a much greater extent to fluctuations in performance in certain areas due to the political views or personal preferences of the incumbents. Also, there have been opinions voiced out in both countries that the way the borderline of powers in this area has been formulated too vague. The President of Finland is said to direct the foreign policy in cooperation with the government. This shape has also been narrowed in comparison to the Constitution of 1919, in which the head of state was almost exclusively determining foreign relations in cooperation with the parliament in regard to treaties as well as decisions on war and peace. In Poland the development also went into restriction of the original construct used in the Small Constitution of 1992 in which the President was the highest representative in internal and external relations. The law currently in force crossed out this phrase and precisely indicates the powers of the President within the foreign relations.

The activity of the Finnish President in foreign relations has been closely tied with the ideas and historical requirements, strongest during the term of U.K. Kekkonen. One can note that the strength of Kekkonen’s presidency was a result, not a reason, of his activity in the foreign relations. During his successors’ times this activity began diminishing to reach a constant level in the early 1990’s. Forcing through art. 93 the President to cooperate with the government may be, as I. Cameron points out, a result of historical experiences (U.K. Kekkonen’s dominance in the field) but also a “counter-balancing factor to the increased popular legitimacy (...) obtained by the introduction of direct elections in 1994.” Joining the European Union was a second significant step in shaping the current position of the President. The Finns have adopted a dual representation policy which functioned until 2009, when after the Lisbon treaty PM M. Vanhanen, without consultation with President T. Halonen, declared the President would not represent Finland in EU summits.

In the Polish case the impact of the President on international relations has been strong due to the extensive interpretation of the constitution during L. Wałęsa’s term and the trend towards presidentialism. The New Constitution has positioned the President in a more clear

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46 I. Cameron, Comments on the constitution of Finland, European Commision for Democracy Through Law (Venice Commission), opinion no. 420/2007.
47 D. Arter, A. Widfeldt, What..., p. 1283.
manner, though not taking into consideration the possible problems arising from disagreements between the President and government in this area. During L. Walesa’s term, as well as A. Kwaśniewski’s under the old and new constitution, an informal division of tasks has been worked out. A confirmation came between 1999 and 2004 when Poland joined first NATO and later the EU. The adopted solution was a result of overlapping competence in both foreign relations and command of the armed forces. The unofficial compromise required the President to represent the state in NATO sittings, while the PM and minister of foreign affairs were responsible for cooperation with the EU and later, after 2004, were taking part in the EU summits.\footnote{48}

A conflict upon foreign relations came with the cohabitation between President L. Kaczyński and PM D. Tusk\footnote{49}. The President adhered to the extensive interpretation of his duties, therefore pressing on the PM to lead the Polish delegation during sittings of the European Council. This excluded the minister of foreign affairs as the protocol of the sittings allowed only two seats at the table. As a result of the crisis, named the ‘fight over the chairs’, the Constitutional Tribunal\footnote{50} gave a sentence in which it interpreted the Constitution in favour of the government. The Tribunal did not share the view of the President and denied him the power to enforce his participation in the delegation to the European Council without the consent of the government. The Tribunal also noted that should the President be invited to the delegation, he does not have the possibility to shape the foreign policy and in any negotiations is bound by the instructions from the Government.\footnote{51}

Basing on the ruling the parliament adopted the Act on Competence, more clearly dividing the role of the President in foreign relations. L. Kaczyński was also extensively interpreting art. 133 sec. 1.2 on appointing Polish representatives to foreign states and international institutions. During his term a number of diplomatic posts have been emptied without appointing new candidates. It was partially a result of conflict between the President

\footnote{48} It needs to be taken into consideration, that A. Kwaśniewski’s second term in office only narrowly overlapped the Polish presence in the EU, though during his term no points of conflict appeared or at least none are known to the public.
\footnote{49} D. Tusk’s government came into power in 2007 after the mid-term elections, lost by the Law and Justice party which took the win two years earlier. During those two years President L. Kaczyński cooperated with the government seamlessly, while it needs to be underlined that he was backed by Law and Justice in the presidential campaign and later affiliated with the party and government though his twin brother J. Kaczyński, the leader of the party and PM until 2007.
\footnote{50} According to the Constitution, one of the main powers of the Constitutional Tribunal is to adjudicate competence conflicts between the highest state organs.
and minister of foreign affairs over the nominees, though critics claimed also that some fault laid in the low professionalism of the President’s office staff, unable to reach agreement and execute the necessary procedures well in advance.

The President of Poland is positioned as the supreme commander of the armed forces, though the constitution itself narrows down the scope of his supervision. Art. 134 sec. 2 clarifies that he executes his power through the minister of defence during peace time and nominates the supreme commander of the armed forces in case of war, but basing on the motion from the Prime Minister. He has the power to declare full mobilisation in case of a threat towards the state and decide upon use of the army, both in reaction to the PM’s motion.

The Constitution of 1997 has given a more narrow shape to this competence as well. Under extensive interpretation of the Small Constitution of 1992 the President was given the possibility to influence the appointment of so-called ‘force ministries’: defence, interior and foreign relations. It was widely used by L. Wałęsa and abandoned by A. Kwaśniewski, though it needs clarifying, that in the latter case in the period under which he performed his duties according to these regulations, the government represented the same political party which Kwaśniewski used to lead. This regulation, highly controversial at the time, did not find its way into the current constitution.

Similarly, the President of Finland is the commander-in-chief of the defence forces. It is a rare case, where the President is expressis verbis allowed to relinquish his duties in this area to another Finnish citizen. Comparing to the previous regulation the powers of the President have been narrowed by forcing to cooperate with the relevant minister. In 2011 a slight re-shape of this article was made. A phrase “in situations of emergency” was added into the text, narrowing even more the original meaning and therefore the scope of the President’s possibilities of action as far as the defence forces are concerned.

The prerogatives of President of Finland with regard to the legislative have been losing importance and, again, suppressed by the Constitution of 1999. First of all, as a confirmation to the narrow down in amendments of 1991, the current Constitution does not give the President the prerogative to dissolve the parliament on his own initiative. Some interpretation may be applied according to art. 26 which gives the possibility of dissolving the legislative upon a reasoned proposal of the PM and after hearing parliamentary groups. Hence the Constitution does not bind the President’s action by the PM’s initiative and requires

52 Art. 61 of the Small Constitution of 1992 obliged the Prime Minister to get the opinion from the President about candidates for theses three ministerial posts. However L. Wałęsa interpreted it as a authority to choose and nominate these ministers.
consultation, we can assume the full decisive competence lies with the President. Moreover, the President lost his legislative initiative but retained the power to issue decrees. Unlike in art. 28 of the Constitution of 1919, now the scope of the decrees must be drawn from the authorization in the Constitution or appropriate acts. The Constitution does not equip the President with power to declare extraordinary session of the parliament. He was given the ceremonial prerogative to declare and close parliamentary sessions but only upon decision of the parliament itself.

An important power of the Finnish President in relation to the legislative is the competence to confirm the acts adopted by the parliament, for which he has three months. In that time he may obtain statements on that act from the Supreme Court or the Supreme Administrative Court. Should the President refuse to sign an act, it is returned to the parliament for consideration. The parliament may readopt the act, which then enters into force without the President’s consideration.

Relations between the President and the legislative in Poland remained more stable throughout the constitutional shift and take a more complicated facet. The President of Poland, unlike his Finnish counterpart, has legislative initiative. It plays a supplementary role and is not executed frequently, mostly as a response to popular demand in highly commented or controversial issues in which the President should step in as a moderator. Due to the nature of the system those initiatives are less frequent in a situation of cohabitation, as their acceptance in an unfavourable parliament is less probable. On the other hand, presidential initiative may seem unnecessary in a situation when the President and government are representing the same political circles and the government will be more eager to fulfil the voters expectations through legislation.

The possibility of shaping the parliament’s term is present in the Polish system, yet strongly restricted by the corset of precise constitutional boundaries. First of all, the Head of state declares parliamentary elections within the limits set by the Constitution of 1997 and decides on the date of the first sitting of the new legislative. According to art. 98 sec. 4 he is equipped with the power to shorten the parliament’s term upon consultation with the speakers of both houses. The Constitution precisely names situations in which he is allowed to do so: in case three consecutive cabinets do not win a vote of confidence after parliamentary elections and if the parliament will be unable to send the President the Act on the Budget within four months after receiving the draft from the government. Effectively, the Presidents

decisive power lies only with the second situation as the Constitution differentiates these two cases, by forcing the Head of state to dissolve the parliament in the first, and giving him a choice in the second one.

Lastly, the President’s strongest competence towards the legislative are reflected with the power of veto. The Polish President receives all the acts adopted by the parliament and has to decide within fourteen days whether to sign them, initiate the process of constitutional review or refuse to sign and therefore return them to the legislative, where his veto can be overruled by a majority of 3/5 in the lower house. If he decides to choose the middle option and initiate constitutional review, the act is suspended until the Constitutional Tribunal gives a ruling. Should the Tribunal find the complete act unconstitutional, the President refuses to sign the act. If only a part of the provisions are declared such, the President may sign the act without those provisions. Lastly, a ruling which declares conformity with the Constitution forces the President to sign the act. The President can not initiate constitutional review of acts to which his veto has been overruled. All the Polish presidents so far have extensively used their veto power as well as constitutional review initiative, regardless of their political affiliations.

Presidents in both countries share additionally a number of traditional powers typical to Heads of state. Most of all, they hold the possibility to grant a pardon to convicted individuals and receive credentials from foreign diplomats. The latter is rather of a ceremonial kind and does not affect the position of the President. The first of the mentioned, although it should rather play a marginal and – most of all – exceptional role, is subjected to cause periodically certain controversies. While in Finland the importance of the pardon is diminishing\(^{54}\), in at least a few cases in Poland the pardon has brought noticeable criticism on the incumbent Presidents\(^{55}\). The traditional approach also results in giving the Polish President the power to grant nationality, as was in Finland until 1999. As with the pardon, the practical importance of this power is limited\(^{56}\).

\(^{54}\) These matters are slowly being taken over by the judiciary.

\(^{55}\) This applies to all Presidents, excluding the first – W. Jaruzelski. Firstly, critics point out the huge number of pardons (particularly during the term of L. Wałęsa and A. Kwaśniewski, when it reached even up to around 690 per year). Since 2005, when L. Kaczyński took the office the numbers fell significantly and this trend is continued as for now by B. Komorowski. Secondly, a more substantial criticism resulted from periodical press publications revealing controversial pardon decisions. These included, among others, alleged boss of the underworld and few cases of people personally or politically related to the incumbents.

\(^{56}\) It is worth mentioning that the Polish President has also been criticised, but in a much milder tone, when it comes to performing this task, mainly for allowing a shortened path of granting citizenship to sportsmen.
Concluding remarks

In both presented cases the evolution of the President’s position took off from a completely different starting point, followed a different pattern according to different principles. Most of all we have tried to present and compare two unrelated government systems which draw patterns from different historical backgrounds. Despite these facts, there is a striking similarity to the point in which both organs have found themselves today.

The main difference between the two systems is the lack of institutional continuity in Poland, a result of the turbulent contemporary history and a multitude of, sometimes contradicting, institutional concepts. The current position of the President in Poland is rather a result of clashing ideas and personal conflicts on the verge of democratisation than a meticulously planned institutional shape. In Finland we come across a completely different situation, where an intentionally constructed position took a long and slow path of evolution towards the place we find it today. However, in both countries the direction of these changes is similar if not identical.

Both Presidents’ powers in relation to the legislative are similar. The Polish Head of state steps out a bit, mainly though the possibility to dissolve the parliament and stronger competence in approving adopted legislation. Nevertheless, there is no key competence that would force us to give him a significant advantage in comparison to the Finnish one. From the starting point the Finnish President was much stronger, he was even considered as part of the legislative, but during the slow process he was stripped of many layers of power. Meanwhile, the Polish President never reached such a high position, therefore there was no need to take his competence in this sphere.

The intra-executive relations and their evolution shape the Presidents’ position to a much greater extent. Today both Presidents share a very similar position in this area, and as a result the problems encountered in both systems are also of a similar kind. The continuous parliamentarisation, easily noticeable in both cases, results in ever growing reduction of his executive competence. The Polish President still enjoys also some part in the creation of the government, mostly through appointing the PM candidate, while it is the Eduskunta that takes this role over in Finland. The traditionally rooted, but today unofficial sittings of the cabinet and the President of Finland give him a slight advantage over the Polish one’s power to hold sittings of the Cabinet Board, a possibility rarely used in practice. Taking the marginally important traditional and more representative sphere out of the equation, the only real element of power both Presidents retain is located in the foreign policy, although conflicts similar to both countries in that area create an unfavourable tendency for the Head of state. The
President is effectively constrained by the government; the cabinet rather than the President is the actor that initiates and directs operations. The Head of state kept the power to control, retard and obstruct. H. Paloheimo commented this situation: “The division of power in international affairs between the President and government is the Achilles’ heel on the contemporary Finnish Constitution”. We can refer the same commentary to the Polish case.

The main reason of the change in relations between the President and government is the evolution of party system in both countries. The weakness of parliaments and their political control over the government resulted from the fragmentarisation of party systems. Since the ninety-eighties the Finnish party system has stabilised and the coalitions have been able to stay in office the whole term. This strengthened the position of PM who took a political leadership from the President. In Poland coalition conflicts in the beginning of ninety-nineties were the reason of introducing the mechanism of the rationalisation of parliamentary regime. It was a constructive vote of non-confidence which enforced the PM and made him an independent subject of political powers. Today we can assume that in Poland the office of PM is consider as much more attractive for politicians than the Presidential post.

Surprisingly, the trend in Finland to democratise the electoral process through stepping from indirect to direct elections, which gives the President stronger legitimacy, has been counterintuitive to the fact that simultaneously the President was slowly stripped of layers of power. The current situation has been pointed out as inconsistent, but we would like to emphasise the lack of clearly-formulated requirements which would deny a parliamentary system the possibility of choosing the Head of state in a popular election. As D. Arter and A. Widfeldt point out, by asking “(...)what sort of president the Finns want” they reach a conclusion “the one they have got.” The same inconsistency is being criticised in Poland.

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59 The President in Finland built his supremacy in the system after the World War II using his political influence to force the parties to form coalitions. His power was strengthened by a special constitutional regulation such as art. 66 of the Parliament Act from 1928, which let the minority of one third of representatives in the Eduskunta to postpone the new adopted act. This regulation caused that it was necessary to formulate very broad coalitions to obtain a majority of two thirds. See A.C. Jungar, *Surplus…*, p. 201.
60 The most important Polish politicians of the last decade: D. Tusk and J. Kaczyński preferred to remain in Prime Minister’s office rather than take part in elections for the Presidential post. It is worth to emphasize that none of Polish Presidents was a former PM, while 6 out of all 12 Finnish Presidents were elected as sitting Prime Ministers.
61 P. Paczolay, *Comments…*, p. 5.
and, as in the Finnish case, no strong arguments can be found in order to question the adopted solutions.

Naturally, a number of problems follow the popular vote, as for example the mentioned costs of running the elections. What is more, due to the nature of the voting the candidates are leaning towards populism, for example by giving promises which in most cases they will not be able to fulfil due to the lack of necessary executive or legislative powers. At the same time, a President elected in a popular vote enjoys a much greater acceptance, reflected clearly by the voter turnout in presidential and parliamentary elections.\textsuperscript{63}

In connection to the above, a question arises whether the systems of both countries remain semi-presidential. In our opinion there is no easy answer to that question. The nature of semi-presidentialism does not give clear indicators how to interpret which system is in fact semi-presidential. Through the presented analysis we find that a simple classification according to the type of election (indirect/direct) and type of executive (dual/singular) is insufficient and requires in-depth analysis of intra-executive relations and both formal and informal competence of the President. Putting aside the first two, the results from the study of presidential position and performance do not allow us to adhere to the opinion that the described states should be perceived as systems substantially exceeding the typical characteristics of parliamentary systems.

\textsuperscript{63} While in Finland in the last eighteen years the turnout in the presidential elections was between 68,9% and 78,7% the turnout in parliamentary elections was slightly lower reaching between 65,02% and 68,58%. This trend is much more visible in Poland, where the turnout in presidential elections reached between 50,9% and 68,2% while in the parliamentary elections it was only between 40,5% and 53,8%.
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