Summary

The legal theories of State responsibility and State/civil liability for injurious and internationally prohibited acts have been in the focus of public international law for a long while. By means of domestic legislation, domestic laws govern the systems of civil liability within the area of private laws of individual States. As opposed to the framework of civil liability determined by diverse domestic rules, exclusively a standard regulation framed at an interstate level shall secure and preserve the uniform system of State liability. Obviously, the issue of State responsibility for nuclear damages raises specific questions to be examined in the framework of general international regulations related to the spheres of responsibility and liability. Furthermore, the mitigation of the financial consequences of a nuclear accident through prompt and adequate compensation via liability-based issues shall compose an important component of the regime for the safe utilization of nuclear energy.

Key words: State responsibility, State and civil liability, ILC's Draft Articles, Paris regime, Vienna regime.

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MODEL OF EXECUTIVE POWER IN POLAND

Executive power in Poland consists of two bodies – the head of state – the president (a single–person institution) and the government (a collegial body). Mutual relations between them do not emulate any of the known models formed in democratic countries, being a cross–over of the chancellor and the presidential systems. The main contribution of the former consists in the so–called constructive vote of no confidence concerning the prime minister, which denotes that the parliament may recall him only when it simultaneously proposes a new candidate for the post of the head of the government and when recalling the prime minister and the government it is able to elect a new prime minister and a new government. The latter contributed a solution according to which some presidential decrees require the counter–signature of the prime minister and the appropriate minister who is liable for them before the parliament, while some acts may be passed without the counter–signature (the so–called prerogatives). Detailed discussion of the president's competences on the one hand and the competences of the Council of Ministers, its president and individual ministers on the other does not seem necessary for the purpose of this study. These issues are well discussed by the science of constitutional law and their repetition or summary does not seem necessary.

Adoption of the elements of two different models results in the eclecticism of legal regulations and their inconsistence. It is impossible to advocate a strong president and a strong prime minister at the same time, which may lead to serious dispute over competences, especially in the situation of the so–called co–habitation.

The model of executive power is now also affected by the modifications of the system of the division of the three powers resulting from the on–going processes of European integration and the development of supranational institutions. Their competences frequently overlap with the traditional competences of internal bodies, including the government, which results in the fact that some of their authority is exercised by supranational bodies. Consequently, this leads to strengthening the supervision of state's internal bodies by independent supranational bodies. This issue constitutes a separate subject of research.

1/ President's competences in relation with the government

Due to a great number of the president's competencies, it is necessary to focus on constitutional regulations and consider only the competences which are most important from the point of view of this paper.

The Constitution of the Republic of Poland empowers both the president and the government with the right of legislative initiative, which is a very unusual provision in democratic states. The practice so far does not seem to justify the reservations that "the instance of such a 'double' empowering of the right of legislative initiative to the executive authority involves the risk of destabilising the government's policy or creating competing executive centres". [12] When the government has a majority in the parliament, this fact should prevent such a danger. However, the contrary may occur in the case of a minority government and the president backed by the parliamentary majority could insist on promulgating laws opposed by the government. A minority government faces such a danger even without such an instance, but the support of the head of the state for a draft of a statute might turn out decisive, even if only from the psychological point of view.

Such a situation could be remedied by adopting the solution introducing the necessity of the government's acceptance for the drafts of statutes involving financial burden. However, a change of the constitution in this area should be considered and the president should be deprived of this competence, especially that he will not bear political liability for implementing the law which he has proposed.

As concerns the so–called prerogative resulting from the enumeration in art. 144(3) of the Constitution of the Republic of Poland of the president's official acts which do not require a countersignature, it is evident that their

number is quire substantial and that their majority has a greater significance than purely formal. This enables the president to adopt a different position concerning some issues than that of the government and the parliamentary majority and to implement an independent policy (e.g. nominating candidates from outside the political parliamentary majority for important state posts), which undoubtedly strengthens his position. Such actions may be rendered ineffective with the means available for the government or individual ministers, but from the legal point of view the situation is not transparent. An example here may be the controversy surrounding the Polish ambassador in Belarus in the late 1990s. The government maintained that the ambassador did not implement the government's policy and remained in close contacts with president Lukashenko's government. The government requested that the president recall the ambassador as it is his sole competence. When the president refused, the Minister of Internal Affairs called the ambassador to Warsaw for consultations and warned that the consultations would last till the end of her term of office. In practice it meant that Poland would have no ambassador in Minsk and only then did the president succumb and nominated a new ambassador in co–operation with the government.

In exercising his competences concerning foreign policy art. 133(3) obliges the president to co–operate with the President of the Council of Ministers and the appropriate minister (i.e. the Minister of Foreign Affairs). Thus, despite his best intentions, the president can not implement a policy which would compete with the policy adopted by the government. This would contradict the Polish reason of state and therefore the constitution places a great emphasis on the uniform position of the executive authority in foreign relations.

This is the reason for the proposal to eliminate the prerogatives transgressing those connected with the traditional competences of the president as the head of state, which would be tantamount to returning to the traditional standards of the parliamentary–cabinet system which gave rise to the chancellor system.

The president exercising his competences in safeguarding the state's external and internal security is aided by the National Security Council as the advisory body, whose members are appointed and recalled by the president. The constitutional character of this body caused doubts even in the period of the "Little Constitution" and still causes controversy. "It is debatable whether appointing presidential advisory bodies requires such a high level of constitutional charter, as the president may always appoint indispensable advisory bodies.(…)" [13]. If the Council transgressed its purely advisory functions due to the mere fact of its "anchoring" in the constitution, this would result in a danger of potential competition with the bodies of the Council of Ministers, and especially for the Minister of National Defence. This issue is closely linked with the competence of the Council of Ministers quoted by art. 146(4)11 of the constitution, i.e. general supervision of the country's security by the Council of Ministers.

The president has the right to summon the Cabinet Council in the cases of special importance, while he himself decides when such a case occurs. The Cabinet Council is composed of the Council of Ministers debating under the chairmanship of the president. However, the Council has no competences of the Council of Ministers and has no competences defined by the constitution. The presidents chairs the sessions of the Cabinet Council, delivering the opening speech, giving the floor and taking the floor himself and may only turn the attention of the members of the Council of Ministers to certain issues and stimulate them to undertake action in the normal way, but has no legal instruments at his disposal. Thus, the Cabinet Council is an advisory–consultative body.

The sense of introducing this institution may be seen in two premises. Firstly, in the tendency to impose regulations on the formal contacts between the two elements of the executive authority and, secondly, in the intention to create the scope for resolving conflicts arising between them (possible especially when the president represents a different political option than the government and the supporting parliamentary majority), or at least to clarify their positions. The grounds for depriving it of the decision–making character was the intention to prevent the president from actual presiding over the government and the emphasis of political liability of the Council of Ministers for the decisions made (the president has no such liability and even if the Cabinet Council had decision–making competences, only the members of the Council of Ministers would have to be liable before the parliament). A question arises whether this institution is really necessary.

The remaining presidential competences connected with the functioning of the government reflect the standards adopted in democratic countries and comprise the following:

1/Appointing the Council of Ministers

In comparison with the "Little Constitution" the procedure of appointing the government has been greatly simplified, which is reflected in the reduction of possible manners of appointing the Council of Ministers from five to three. The manners are as follows:

I. According to the procedure defined in art. 154(1) of the constitution. The procedure of appointing the government in this manner is initiated by appointing the President of the Council of Ministers (the Prime Minister) by the president. Subsequently, the prime minister proposes the composition of the Council to the president. After accepting it, the president appoints the prime minister and the remaining members of the government. The government must receive the vote of confidence from the Sejm within 14 days adopted by the absolute majority of votes in the presence of at least half of the statutory number of deputies.

II. According to the procedure defined in art. 154(3) of the constitution. If the president fails to appoint the government in the procedure defined in art. 154(1) (e.g. the president did not accept the composition of the Council of Ministers proposed by the prime minister who he had appointed), the initiative is transferred to the Sejm. A candidate for the prime minister may be proposed by at least 46 deputies. The Sejm elects the prime minister in a vote by roll call with an absolute majority of votes when the quorum is at least half of the statutory number of deputies. Then the prime minister proposes the programme of the government's activities and the members of the Council of Ministers to the Sejm at a session. The motion to elect the Council of Ministers is voted conjointly (other motions

in this matter are unacceptable) and the Sejm elects it with an absolute majority of votes when the quorum is half of the statutory number of deputies. The president is obliged to appoint the Council of Ministers elected without his participation.

III. According to the procedure defined in art 155(1) of the constitution. If neither of the procedures presented above is successful, the president assumes the initiative within 14 days after the procedure defined in art. 154(3) comes to an end and appoints the President of the Council of Ministers and the remaining members of the Council at the prime minister's proposal. Within 14 days of the appointment the Council must acquire the vote of confidence from the Sejm adopted with a simple majority of votes in the presence of at least half of the statutory number of deputies. If this attempt fails, the president is obliged to shorten the Sejm's term of office.

2/Accepting the pledge from the president, vice–presidents and members of the Council of Ministers.

3/ Implementing changes in the composition of the Council of Ministers.

The president's function here is purely formal and results from the resolution of the Sejm, when it recalls a minister who received the vote of no confidence from the Sejm, or from the decision of the prime minister, when he implements changes in the government following his proposal. In neither case does the president have any means of opposing or at least suspending the decision concerning changes in the government. The presidents is not empowered to influence the changes of ministerial posts or even initiate the procedures resulting in the changes (e.g. the president can not propose a motion to the Sejm to express a vote of no confidence to a minister).

4/Accepting the resignation of the Council of Ministers.

The act is purely formal, i.e. the president is unable to reject the resignation of the government, in three cases: when the government resigns at the first session of the newly–elected Sejm, when the Sejm does not resolve the vote of confidence concerning the government or when it resolves the vote of no confidence. In such cases the president accepts the resignation and empowers it to perform its duties until a new Council of Ministers is appointed. Only in one case does accepting the resignation not have a purely formal character: when the resignation of the Council of Ministers is rendered by the prime minister as a result of his resignation form the post, the president may refuse to accept the resignation of the government.

It should be noted here that the president can not recall the government which he appointed and also can not propose to the Sejm to express the vote of no confidence to the government. This can not be done also by a newly–elected president, who is then forced to co–operate with the Council of Ministers appointed by his predecessor.

5/Motioning the Sejm to bring a member of the Council of Ministers to justice before the State Tribunal.

2/Competences of the Council of Ministers

The constitution states in art. 146(1) that the Council of Ministers conducts internal and foreign policy of the Republic of Poland. The word "conducts" should be replaced with a more unequivocal term – "determines". In art. 146(3) stating that the Council of Ministers controls the government administration, the constitution clearly defines its character as a body of executive authority. Using the notion of control it also designates the position of the council of ministers in the whole government administration. The notion is usually identified with a hierarchical order, sometimes described as directive supervision. Such a system exists when the supervisory body may influence the activity of the subordinate bodies, including the possibility of issuing binding orders. By stating in art. 146(2) the principle of conjecture of competences of the Council of Ministers within the scope of executive power, the constitution strengthens its position in the hierarchy of state bodies, which is especially important in the relations between the Council of Ministers and the president. As far as the relations with the parliament are concerned it introduces the premises clearly indicating that statutes define the principles and the Council of Ministers executing them is liable for defining the means of their implementation.

It is not necessary for the scope of this paper to present full characteristics of the competences of the Council of Ministers. I will only name those which are significant within the scope of the duties of the executive authority:

1/Ensuring the implementation of statutes.

2/Issuing ordinances

The ordinances are to relieve the parliament of too detailed or too technical regulations and to complement the system of universally binding norms of the resolved law. They can not infringe or alter the norms of hierarchically higher law (the norms of ratified international agreements, statutory and constitutional norms). They are issued – according to art. 92(1) of the constitution – only on the basis of a detailed authorisation expressed in a statute.

3/Coordination and supervision of the work of government administration bodies.

Due to the scale of coordination the Council of Ministers exercises this competence only in the most important and the most complicated matters during its sessions. As a rule the Council is aided by its internal bodies and only when their effort proves unsuccessful does the Council undertake action.

4/Protection of the interest of the State Treasury

5/Controlling the execution of the state budget

The Council of Ministers is liable for the execution of the budget before the Sejm, who grant the vote of approval. If the vote of approval is not granted, in many countries the government resigns. This means that a negative evaluation of the Council of Minister's financial activity may, at most, result in the proposal to grant the vote of no confidence, but this does not mean that it will acquire a required majority, which is more difficult than the resolution concerning the refusal to grant the vote of approval.

Refusal to grant the vote of approval may lead to constitutional liability of the members of the government.

6/Concluding international agreements requiring ratification as well as accepting and repealing other agreements

8/Abating ordinances and minister's orders on the proposal of the president of the Council of Ministers

3/The position of the president of the Council of Ministers in the political system.

Art. 148 of the constitution has a key significance in determining the position of the prime minister in the political system. It is important not because it constitutes a separate provision standardising the competences of the president of the Council of Minister (such provisions existed in previous constitutional regulations), but because the competences enable actual directing of the Council, not just presiding over its work and justify recognizing him as an independent and superior administrative body. It states that the prime minister:

1/Represents the Council of Minster.

2/Directs the work of the Council of Ministers.

3/Promulgates decrees.

4/Supervises the execution of the Council of Mister's policy and determines the manner of its execution

5/Coordinates and supervises the work of the members of the Council of Ministers

On the basis of the experience so far P. Sarnecki's opinion should be accepted that "(…) the prime minister's coordination between the ministers is executed to implement political tasks and aims determined by the government and not the tasks and aims determined by the prime ministers (…). The Council of Ministers is politically liable for the prime minister's coordination activities"[B1][14].

6/Supervises territorial self–government.

7/Is the superior of the government administration employees.

Art. 153(2) states that the prime minister is the superior for the civil service corps.

8/Apart from the competences mentioned above the prime minister is entitled to appoint his own or the Council of Minister's auxiliary bodies.

I will remind here that the prime minister may appoint committees, councils and teams on his own initiative or following the proposal from the Council of Ministers. He has competences to appoint and recall high–ranking civil servants: government's plenipotentiaries, secretaries and undersecretaries of state (he appoints them on the proposal of an appropriate minister, however, the act on the Council of Ministers does not mention such a proposal in the case of recalling them).

9/A separate group is constituted by the prime minister's competences concerning presidents of provinces, who are representatives of the Council of Ministers in provinces.

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Резюме

Стаття присвячена проблемам дослідження виконавчої влади в Польщі. Деталізовано розглянуто модель органів виконавчої влади в Польщі.

Ключові слова: виконавча влада, президентська модель, законодавчі ініціативи, президентські повноваження.

Резюме

Статья посвящена проблемам исследования исполнительной власти в Польше. Детально рассмотрена модель органов исполнительной власти в Польше.

Ключевые слова: исполнительная власть, президентская модель, законодательные инициативы, президентские полномочия.

Summary

The article is dedicated to the problem of model executive power in Poland. The model of executive power in Poland is outlined in details.

Key words: executive power, presidental systems, legislative initiatives, president's competencies.

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