

KAROL MARIAN POSPIESZALSKI

On the Concept of an Organ of State¹

Some authors do not analyze the concept of an organ of state at all in their works on this issue², others define it on the basis of the area of law they are discussing, some describe it as a separate part of the state apparatus or a separate organizational entity³, others refer to the personal substrate—for them such an organ is a person or group of people (a collegium) endowed with competence, sometimes it is said to be general competence⁴, and, finally, sometimes it is defined as the authority

1 Translated from: Karol M. Pospieszalski, *O pojęciu organu państwowego*, „Ruch Prawniczy, Socjologiczny i Ekonomiczny” 1972, no. 1. by Stephen Dersley. The translation and proofreading were financed by the Ministry of Science and Higher Education under 848/2/P-DUN/2018.

2 S. Włodyka, *Ustrój organów ochrony prawnej*, Warszawa 1968; Z. Resich, *Nauka o ustroju organów ochrony prawnej*, Warszawa 1970.

3 A. Burda, *Polskie prawo państwowe*, Warszawa 1969, pp. 199, 200: An organ of state: this is a part of the state apparatus that is distinguished from the other parts of this apparatus by the fact that, as part of the whole operation, it fulfills specific tasks and is organized in a special way. M. Jaroszyński, *Polskie prawo administracyjne*, Warszawa 1956, p. 162:

in a strict legal sense, an organ of state is a distinct part of the state apparatus (an organizational unit) established to perform state-mandated tasks with the help of measures that derive from the states' supreme power (*imperium*). J. Starościak, *Prawo administracyjne*, Warszawa 1969, p. 51, 52, 54: an administrative organ is a separate unit in the state organization, having the scope of its activity established by law (which can be credited to the state in the field of organizing social relations) and undertaking this action through persons specified in law and in specific legal forms [...] on the one hand, a separate sphere of competence, but on the other hand it is also a set of material and personal resources ...

4 In this way or similarly, C. Znamierowski, *Podstawowe pojęcia teorii prawa. Układ prawny i norma prawna*, Warszawa 1924; C. Znamierowski, *Prolegomena do nauki o państwie*, Warszawa 1948, p. 253; C. Znamierowski, *Wiadomości elementarne o państwie*, Warszawa

or power that is proper to a specific entity. Thus, this is the competence of a minister, but not of an undersecretary of state or a general director, because they only act “on behalf of” the minister, who controls their activity.⁵

Definitions are usually contained in textbooks for the introduction to jurisprudence, state law and administrative law. More space was devoted to this issue in the trilogy of Stefan Rozmaryn, Witold Zakrzewski and Maurycy Jaroszyński, in the context of deliberations on whether a minister or a ministry is an organ.⁶ Unfortunately, the arguments of Czesław Znamierowski—a legal theorist—are not based on normative material.⁷ Recently, Zygmunt Ziemiński tried to clarify this notion in the draft edition of *Polish Legal Dictionary*, but since his comments are in draft form they are reserved rather for internal discussion.⁸

1948, p. 75; C. Znamierowski, *Zastępca i organ*, “Ruch Prawniczy Socjologiczny i Ekonomiczny” 1963, 2, pp. 221–242; C. Znamierowski, *Grupa społeczna i jej struktura*, “Przegląd Socjologiczny” 1963, 1; C. Znamierowski, *Działanie zbiorowe*, “Ruch Prawniczy Socjologiczny i Ekonomiczny” 1962, 2. Z. Ziemiński in *Polski Słownik Prawniczy* (organ, state action, reguły, the constitutive rules of conventional acts); A. Łopatka, *Wstęp do prawoznawstwa*, Warszawa 1969, p. 125 ff. A person or group of persons who, in accordance with applicable law, undertaking actions of authority considered to be state actions. An organ of state is, for example, the Sejm, the government, the minister, the court, the head of the presidium department; S. Ehrlich, *Wstęp do nauki o państwie i prawie*, Warszawa 1971, p. 65: by an organ of state one can understand a group (sometimes one person) that has been singled out to fulfill the tasks (also differentiated in detail within the group) specified by law. The organ is part of the whole formed by the state organization, and acts on its behalf. Among the organs it is necessary to distinguish those which have powers of authority (imperium); J. Starościak, *Prawo administracyjne*, Warszawa 1968, p. 96. J. Wiszniewski, *Zarys encyklopedii prawa*, Warszawa 1966, p. 30. *Mała Encyklopedia Prawa*, Warszawa 1959; *Słownik Wiedzy Obywatelskiej*, Warszawa 1970 (entry: state organs system); J. Kowalski, *Wstęp do nauk o państwie*, Warszawa 1968, p. 154.

5 See footnote 8.

6 S. Rozmaryn, *O rozszerzeniu uprawnień ministrów w PRL*, “Państwo i Prawo” 1956, ed. 3, pp. 451–460; W. Zakrzewski, *Na marginesie artykułu prof. S. Rozmaryna*, “Państwo i Prawo” 1956, 5–6, pp. 983–993; M. Jaroszyński, *Z problematyki organów państwowych*, “Państwo i Prawo” 1956, 7, pp. 111–120; also in the collection: *Z teorii i praktyki prawa administracyjnego w PRL*, Warszawa 1964, p. 170.

7 C. Znamierowski, op. cit.

8 Z. Ziemiński, op. cit.

Our reflections should contribute to a broader and deeper analysis of the concept of an organ, and be based on numerous examples from practice, in order to solve a number of doubts that arise during consideration of this problem, but they will not attempt to provide an exhaustive treatment of the subject. They sometimes refer to the views expressed, they tend to avoid polemics, they even try to reconcile views, and to some extent they go beyond what has been said in our scholarly literature. New questions raise new problems. The topic is challenging and controversial, especially when theoretical arguments are confronted with examples from practice. But can an attempt to classify an extremely rich, diverse normative reality into strict scientific categories ever be entirely successful?

I

An organ of state is made up of two elements: a personal substrate and the competence necessary to exercise power. The personal substrate is either a physical person or a group of people—a *collegium*. Legal provisions usually stipulate how the organ is to be staffed. However, it also happens that the state forms the substrate from a group that already exists in social reality and endows it with competence. For example: the examination board of a private secondary school, in other words a group of people existing outside the state apparatus, receives from the state the right to issue secondary school leaving certificates that have the same validity as state school leaving certificates, and thus in this way the group is drawn into the state apparatus, becoming a *collegium* performing the duties of a state organ. Similarly, in socialist states, the right to nominate candidates to be deputies (i.e. members of parliament) is vested in the central and local bodies of mass social organizations, so these organizations can perform a very important state function in the election process and thus potentially enter the system of organs in this narrow scope as well.

It is possible to refer to an already existing social substrate; it is possible to attribute a personal element to a social organization, by means of which it can be granted a high level of trust. Sometimes, due to the organ's competence, it is clearly indicated that the personal element is appointed in a social way, that is, in a way that is not directly regulated by legal regulations. This is a familiar phenomenon in our law. On the basis of the decree of 10 November 1954, responsibility for the implementation of the Protection, Health and Safety at Work Act and the Labour Inspection Act was transferred from the Minister of Labour and Social Welfare to the trade unions. Their organs issue administrative acts; for example they adjudicate in criminal-administrative proceedings. Therefore, in the Act of April 14th 1967 on the Prosecutor's Control of Compliance with the Law, the supervision of compliance with law also covers professional, local self-government, cooperative and social organizations within the scope of their state administration functions, or other functions assigned to them by the Acts (Article 3 section 1, item 3). Of course, entrusting such functions to social organizations naturally involves them in the legal system, and thus valid legal provisions on the creation of organs change their character. An organization does not thereby cease to be social, but it does become—as far as these competences are concerned—an organ of state, indirectly.

Our statutes sometimes delegate certain functions generally to any person who may be affected. These include the following provisions:

1. Whoever in necessary defence repels a direct illegal attack without indirectly harming any social or individual interest, shall not be deemed to have committed an offence, especially if he acts in order to restore public order or peace, even if this does not result from an official duty (Article 22 § 1 and 2 of the Polish Penal Code).

2. Everyone has the right to apprehend a person who is in the act of committing a crime, or who has been pursued immediately after a crime has been committed, and to hand him over to the Citizen's Militia if there is a fear of this person hiding, or if his identity cannot be established (Article 205 of the Code of Civil Procedure).

3. It is the duty of every citizen to protect social property against imminent damage. A citizen who has suffered damage to their person or property while protecting social property is entitled to compensation (Article 127 of the Code of Civil Procedure). When a citizen takes a decision on the basis of these provisions, entering the legal sphere of another (this will always be the case in situations 1) and 2), he acts in the place of an organ of state.

When the organ is a group—a collegium—there must be, of course, rules that determine how a decision is made by the collegium as a whole, in particular what the quorum is and what majority is necessary for a resolution to be made, how the chairperson of the meeting is chosen. It is very important for the legal position of the group-collegium whether it provides itself with an organizational statute, in other words, whether it possesses autonomy within the internal system, or whether this statute has been established by another external organ. Within the framework of the supreme organs of state, the former position is held, to a large extent, by the Sejm and also in fact by the Council of State and the Council of Ministers. The latter organs adopt their own regulations, but they could also be given them by the Sejm.

The next issue to address is the element of organisational separation emphasized in the definitions, since there are different levels on which this separation can be distinguished. The problem does not raise any doubts in the cases of the Sejm, the Council of State or the Council of Ministers, because these collegia obviously constitute an “organizational unity” in themselves. Nevertheless, the distinction of smaller groups within them—such as committees—creates new “organizational units”. This is a complicated matter when it comes to the Supreme Control Chamber, ministries and courts ...

With the Supreme Court, is the issue the organisational division of the Supreme Court in relation to other organs and other courts? Or is it rather the special chambers of the Supreme Court, or maybe departments within chambers, or finally, about the distinction within them of judi-

cial panels with different numbers of members, or maybe the Supreme Court in full, in the form of a General Assembly? Is the full Supreme Court the organ, or are the individual chambers, or the judging panels within them also organs? Is the organ the First President himself or is it the administrative collegium?

Here we must return to the starting point of our deliberations. The organ is a person or a group of persons; a group treated as a collegium that works together. Thus, it cannot simply be the Supreme Court that is the organ, even as a General Assembly, but only the individual judges, including the First President, the presidents and the administrative collegium, as well as the disciplinary court, the high and highest disciplinary court. The organ is distinguished by the rules of appointing and dismissing the person who holds the function of an organ, and in our case the rules on the appointment of individual judges.

The second important distinguishing feature is the competence conferred on a person or collegium, which is generally established on a permanent basis, i.e. for an indefinite period of time, either by a statute or by further provisions adopted on its basis. Competence could also be established, at least in theory, on a case by case basis. Such would be an ad hoc organ established for a specific case, with an appointed panel of judges. The separation of an organ is, in a way, born of itself—once by establishing this group, and secondly by assigning it, for example, its specific competence.

In our example of the Supreme Court, in addition to the commonly known sources that relate to the organization and competence of this Court, special attention should be paid to the regulations contained in the resolution of the State Council of 22 May 1962. Organizational and competence provisions are closely intertwined therein. The ordinance of the First President issued in agreement with the Minister of Justice specifies the division of the Chambers into departments. When the First President appoints the Presidents of the chambers in the departments (§§ 8 and 4), these are organizational elements, but when the administrative collegium allocates judges to the chambers and de-

partments for the division of activities, these are organizational and competence elements.

Both the personal substrate and competence are essential elements for the existence of an organ. However, there is a difference between them. While for the personal element it can be sufficient to identify an existing social group or body, competence must be regulated *expressis verbis*. When competence is granted to the personal substrate, this creates an organ. In this sense, there is a multitude of organs within the Supreme Court. Each specific panel that is judging, setting guidelines or answering a legal question is an organ.

Such a multitude of organs existing within organizational units or within the machinery of smaller units is a very common phenomenon. In the ministry, alongside the minister, the governing organ, there are undersecretaries of state, directors general and directors of departments. In our opinion, they are organs, because a certain personal substrate has a specific competence based on the organisational statute of the ministry adopted by the Council of Ministers. It has been said that undersecretaries, directors general, etc. are not organs because the concept of an organ of state implies it has its own competence. However, an entity whose scope of activity can be interfered with at will lacks its “own” competence.⁹

9 M. Jaroszyński, *Polskie Prawo Administracyjne*, Warszawa 1956, p. 16. For example, the minister has the scope of competence specified by law and therefore constitutes a state organ. However, the undersecretary of state (deputy minister) or any other employee of the ministry is not a separate state organ in the strict sense of the word, because they do not exercise their competence as determined by legal regulations, but the competence of the minister as a state organ. For this reason, it is not a state organ in the strict sense of the ministry as a whole, and neither are the internal elements of the ministry, like departments... J. Starościk, *Prawo administracyjne*, Warszawa 1969, pp. 51, 52, 54: How to explain the fact that some employees of the ministry, such as department director, are able to make independent decisions? The fact that the director makes a decision, even if he is authorized to do so by the ministry’s regulations, does not make him a separate administrative organ. He is the person who performs the office, who does not have his own competences, performs part of the competences of the minister, and the minister can withhold any part of these competences, can reserve any decision to himself; thus each ministry clerk conducts these matters not on his own behalf, but on behalf of the minister and within the competence of the minister.

If this view were adopted, there would be only one organ in an absolute state—an absolute monarch—who could assume the competence of the organs he created. Almost all the activities of the Vice President of the United States of America or of the Secretary (head of the department) would not be an expression of the competence of the organs of that name. The diplomatic representatives of the state abroad must follow the precise instructions of the Minister of Foreign Affairs, who may at any time rescind their competence by sending a separate representative tasked with dealing with a specific matter. The General Prosecutor may undertake any action that falls within the scope of the prosecutor's office or have the action prosecuted by subordinate prosecutors, unless the law reserves a particular activity exclusively to his jurisdiction. The Council of Ministers may take over the competence of the Presidium of the Government or the commission for matters of the presidia of national councils.

There is no doubt that the composition of the Supreme Court has its own competence, in the sense that no one is permitted to interfere with it, and that the undersecretary of state or the director of the department does not have his "own" competence. However, he has the competence specified in the statutes of the ministry. This is a necessary and sufficient element. Within the organizational units called the "Supreme Court" and the "ministry" there are quite different inter-organizational systems.

II

Are organs only those persons or groups to whom the statute is to be issued in its final form, or is the specific participation provided for by law in the establishment thereof sufficient? Do the Sejm and Senate from the March Constitution form an organ together, or do the Sejm and Senate form separate organs? It seems that when passing laws, the organ is every chamber of parliament, the group of people to whom legislative initiative belongs; and that it is also an organ that

signs the law stating its adoption and the body which orders its promulgation, if the promulgation is a condition for its validity. In all these cases—in accordance with our assumptions—a specific group of persons has a specific competence.

Therefore, a doubt must be clarified. It was said that since the competence to propose a candidate for deputy or to submit a draft law (to implement a legislative initiative) qualifies the entity thus endowed as an organ, a citizen bringing an action should also be consistently recognised as an organ, because in this case he or she forces the court to act. As is well known, Kelsen went even further in his deliberations, to suggest that a citizen concluding an agreement is an organ. Our position is as follows: a group of citizens who propose a candidate or who take a legislative initiative in accordance with legal procedure act within the framework of the state apparatus, thereby act as a subject of a state authority with partial competence, and exercise their political rights. On the other hand, a citizen bringing an action turns to the state apparatus not as a subject of authority that has a political right, i.e. the right to co-determine the state, but as a beneficiary exercising his social right, which means that he can demand assistance from the state in the form of a service. In the first case, the citizen *ad statum reipublicae spectat*, while in the second *ad singuli utilitatem*. In the first case he is a member of a control organ, but is not an organ in the second.

Competence which consists of the functions of only one stage in the process of creating an act sometimes arises through the appointment of a person who holds the function of an organ, and sometimes by election or nomination. Of these acts, the election to the Sejm is obviously the most important. It consists of two sets of state actions—proposing candidates and their election, from which it follows that, under the electoral rules, certain persons were elected as deputies. The nomination of candidates for deputies by the District Committee of the Front of National Unity is an act of a social organisation acting as an organ of state in this respect. All citizens registered in the electoral councils in a given

district operate as a fully-fledged organ. It is this that decides, according to a certain procedure, which of the proposed candidates is to become a deputy. The District Committee must be treated as separate organ, as must the collegium of voters, although the actions of these two groups constitute one decision.

In a similar sense, the appointment of Supreme Court judges by the Council of State is usually the result of two organs—the ministry of justice, which proposes a set of candidates for judges of the Supreme Court, and the selection made by the Council of State. The case is slightly different when the Council of State has its own candidates, from among the judges of either the past or new term. In this case the Minister of Justice issues an opinion on them, which should be considered by the Council of State. There is no significant difference from the previously discussed act of the election of deputies. While for technical reasons the collegium of voters can only elect deputies from the group of registered candidates previously submitted by the district electoral commission, the Council of State may also elect judges from outside the group of persons submitted. Omission of the stage provided for in this case, that is, the Minister of Justice issuing an opinion, would not result in the invalidity of the nominations. Thus, the act of proposing candidates in the election procedure is more important than the act of presenting the candidates for judges by the Minister of Justice, since this stage could be omitted without prejudice to the validity of the final act.

The process of appointing the person who holds the function of an organ can be shaped in other ways: the candidate selected by the organ should be approved by a second organ. The issue here is the two acts of organs of state. Thus the Act on National Councils stipulates that the chairman of the presidium elected by the voivodship national council must be approved by the Council of Ministers. The validity of the act of appointment depends on two unanimous decisions of the two organs.

This question is difficult to resolve: what is the significance of an opinion, provided for by law, being issued in the course of a legal act?

A distinction must be made here between the following cases: either the opinion is issued by a committee selected by a collegiate organ or by a single individual or group that stands outside the organ, or the opinion is an independent act in itself, as in the case of a referendum.

It seems to us that the mere issuing of an opinion, even if prescribed by law, does not itself qualify the person or group that issues it as an organ of state. Moreover, legal regulations should stipulate that as a result of an opinion a given individual or group puts forward specific motions that must become the subject of formal deliberations, e.g. a parliamentary committee submits certain amendments to a bill that the Sejm must discuss and adopt a specific stance on.

This raises the question of how to classify the agreement from the decision-making organ of the Central Council of Trade Unions that is sometimes required when issuing legal acts. The Act on the establishment of the Labor and Wages Committee of 13 April 1960 states that the scope and mode of operation of ZUS (the Social Insurance Institution) will be determined by the Council of Ministers in agreement with the Central Council of Trade Unions. On this basis, the Council of Ministers issued the ordinance of 27 April 1960 (Journal of Laws of the Republic of Poland, item 134) as its own act, stating at the outset that it was issued in agreement with the Central Council of Trade Unions. How to assess the role of the Council here? Did it have to give its full consent as a condition for the act to be valid? Or was it only a matter of issuing an opinion, which the Council of Ministers was obliged to take into account as far as possible? Of course, the Central Council is not the legal co-creator of the regulation. If this is how statutory authorization were to be understood, it would constitute a breach of the Sejm's competence, since the Sejm cannot authorize a social organ to issue or even co-issue such an act. In its authorization, the Sejm only obliged the government to take maximum account of the demands of the Central Council. Therefore, the participation of the Central Council of Trade Unions must be qualified as issuing an opinion. Does such participation in issuing the act draw the

Central Council into the circle of state organs? Our answer is negative. Such an effect could only result from the power to issue normative acts.

Finally, the issue of the organ in a referendum should be clarified. In a capitalist state, it would be appropriate for all those who express an opinion to not qualify a particular body as an organ, because the principle of a free mandate applies there, as a result of which the opinion expressed in the popular vote is only an expression of a state-ordered investigation of social moods that can bind parliament politically, but not legally. However, this is not the case in a socialist state: the result of a referendum is binding on the people's representatives, so all citizens should be considered as an organ. On the basis of the Act of 27 April 1946 on People's Voting, such an authority once existed in Poland, because at that time—in the times of the National Council—the rule of a deputy's binding mandate was in force.

However, an organ of state is not constituted by a meeting of the electorate before which a deputy reports on his or her activities and which makes demands of him or her, because there is no specific resolution expressing confidence in a deputy or demanding a certain action from him or her. This would be an organ of the electorate, which decides on the dismissal of a deputy or councilor. As it is well known, only the dismissal of a councilor was regulated in the electoral ordinance of October 31, 1957, which entails that the deputy's dismissal is no longer valid, due to the lack of implementing provisions in relation to the Constitution.

It turns out that the multiplicity of organs of state is caused not only by the fact that the competence to issue acts is diffused in such a way that the organs only have a small scope in this area, but also by the fact that the decision-making process is divided between different organs.

Just as in the Supreme Court there are many organs—as we have seen, and just as in a ministry there are a significant number of organs, in another inter-organizational system, we can also identify many organs in the entities that go by the name of faculty chairs. Here in the

university there are numerous examination boards for the admission of candidates for studies (the admission of students is of course an administrative act) or a Master's examination (awarding diplomas is another such act). The Faculty Council awards the degree of Doctor or habilitated Doctor, the senate makes the decision of the university—the faculty council and the senate are organs of public authority, while also being the organs of a legal person. In the departments of the state health service, a doctor has the right to issue administrative documents confirming the inability of patients to work, which automatically results in the person being excepted from the obligation to work.

III

Of course, order needs to be brought to this multitude of organs, and we have a remedy for this purpose in the legal system.

It is well known that the act of individuals or group-collegia is attributed to the state, and thanks to this attribution the unit or group constitutes a state organ. In a collegium, this is a very complicated matter. First, there must be rules that must be followed in order for the acts of individuals forming the group to be considered the acts of the group itself. The question here is what the quorum is to be, and what majority—ordinary absolute or qualified—is to be adopted by the collegium as a whole; secondly, this conventional act is attributed to the state. The collegium adopts the resolution—the state issues the legal act.

In addition to this attribution, which—as we have seen—in the case of the collegiate body is double in the above conception, there may be a third attribution, which in the case of the collegiate body falls between the first and second. The verdict of the Supreme Court panel ruling begins—as we know—with the words: “the Supreme Court consisting of ...”. In other words, the ruling which the majority of the members of the panel arrived at is uttered first of all by virtue of the legal rules assigned to the entire panel, in other words the judging collegium, is at

the same time is attributed to the Supreme Court as an organizational unit, which is expressed in the saying: “the Supreme Court consisting of ..., at the same time”—and this is a further attribution—“of the state”. Thus, the judging panel issues a judgment, the Supreme Court issues a judgment, the State issues a judgment.¹⁰

The case of a minister and his undersecretary of state etc. is similar (with a different inter-organizational arrangement, of course). Since it is a one-man organ of public authority, one degree of attribution is not necessary. The activities of the department director are by law assigned to the minister and the state.

The same goes for the multiplicity of organs in university chairs. The act of the Master’s examination committee is attributed to the university—this is expressed, not very precisely, in the words: X obtained a Master’s diploma at the university, which places the emphasis not so much on the constitutive decision of the organ as on the element of the candidate’s own work. The act of awarding a doctoral degree is attributed to the Faculty Council acting on behalf of “the university”. In this way the number of organs is reduced to one organisational unit. The administrative act of a doctor should be attributed to the health care institution for whom the doctor works. In the case of teaching or health care institutions, the attribution is not as verbally precise as in the case of court rulings.

It seems that on this basis one can say that the word “organ” has two meanings. When we say that the Sejm meets during a plenary session, we mean an organ in the first sense; when we say that a minister has issued a decision that was in fact taken by the director of the department and attributed to the minister, it is an organ the second sense; when the Supreme Court issues a judgment, it is an organ in the second

¹⁰ This is not a new concept: A. Merkl, *Allgemeines Verwaltungsrecht*, Wien–Berlin 1927, p. 305: With these individual bodies, the functions of the state are assigned to the state through a collective organs built into the state as a transition point, they are somewhat indirectly state organs. Our remark: the author distinguishes between collective and collegial bodies; the collective body is the ministry.

sense, because, after all, the verdict was issued by one of many of its judges.

Such attribution brings welcome order to our considerations, but it does not solve all the difficulties. It is impossible to attribute all the acts issued by the Supreme Court to this Court as an organ in the second sense, nor all acts in a ministry to the minister. The First President does not act “on behalf of” the Supreme Court, which thereby decides to submit a motion on the interpretation of the provision and thus sets in motion the composition of the court, the chamber, the general assembly. Neither does this apply to an administrative collegium or higher or supreme disciplinary court. These organs do not act on behalf of the Supreme Court, but in their own name as organs with predominantly internal functions. It would be contrary to reality to attribute the resolution of the ministerial collegium to the minister.

Therefore, one more meaning of an organ must be created: an organ as a group of organizationally closely-linked organs: those to which the construction “on behalf of” can be applied, as well as others (internal). In the last sense, the ministry is obviously an organ. Thus we come to the solution employed by Professor Rozmaryn in his 1956 article *O rozszerzeniu uprawnień ministrów w PRL* (On Extending the Powers of Ministers in the People’s Republic of Poland). A minister is an organ of state in the first sense when he acts alone, in the second sense when a department director acts on his behalf, this director being in the same sense an organ as the judging panel of the Supreme Court, although in a quite different inter-organizational system.

The legal sciences are usually of the view that a minister is an organ of public authority, because he is attributed the decisions issued by the ministry’s employees (on behalf of the minister). Legislation very stubbornly uses term “ministry” (Article 32 of the Constitution: “The Council of Ministers shall coordinate the activities of ministries and other subordinate bodies. ...”); uses “central office”, also the “central administrative body” as a synonym for the central office (not in the sense of:

head of office); and uses the terms “department” (not head of department - see the Act on National Councils), “customs office”, etc. The legal sciences use the term “organ” in the first and second sense, while the legislation uses it in the third sense.

Within our framework, it is not easy to classify organs that are combined together. And so the Labour and Wages Committee established by the Act of 13 April 1960 (JL RP, item 119) consists of the chairman appointed by the Sejm (Council of State), deputy chairmen appointed by the president of the council of ministers, two representatives of planning committees and the Minister of Finance, the president of ZUS (the Social Security Board) and five representatives of the presidium of the Central Council of Trade Unions appointed and dismissed by them. The Committee operates in three forms: the chairman, the presidium composed of the chairman, deputies and members appointed by the Council of Ministers (Resolution of the Council of Ministers of 23 June 1960—Monitor Polski item 259), and the plenary session. The distribution of competence between these three bodies is as yet not known, as the statutes of the Committee adopted by the Council of Ministers have not been announced. There is the clear competence of the Chairman, who not only chairs the Plenary and Presidium (and probably coordinates the work of these bodies), but first and foremost sits on the Council of Ministers and represents the Committee there, and also has the right to issue orders and regulations on matters falling within the scope of the Committee’s activities in cases specified by law. In this respect, he is equated with ministers. It is not the Committee, but he that issues executive regulations to the Acts, and it is likely that the internal regulations specify what influence the presidium or the Committee has on their content. The latter, defined in the Act as a collegiate organ, is an organ in the first sense when it acts in its full form (at least with the quorum), in the second when the presidium or the Chairman acts on its behalf (e.g. at a meeting of the Council of Ministers), and in the third when it concerns a set of organs regulated in the organisational statutes of the unit called the Committee.

IV

Collegiate organs must, by their very nature, have internal organs, at least in the form of a chairman. Such an internal structure is already provided for by the three-person judging panels. Larger organs have a more complex internal organization, and in particular they include further smaller groups, such as committees, among their members. The chairman has two functions: he represents the organ externally, and also acts behind the collegium in certain internal cases, e.g. in urgent ones, like chairman of the presidium of the national council, subject of course to the approval of the plenary, but in principle his competence, like that of other internal bodies, is directed inwards. Commissions prepare the decisions and in particular deliver opinions to the plenary.

In the Sejm, a presidium operates as a representative organ, and as such for the internal organization of its work (it seems, however, that the Marshal as the chairman of the meeting is a separate organ, a fact which is omitted in the regulations), while the organs preparing decisions and issuing opinions are the Sejm committees. What happens when the group selected by the collegium has the power to issue acts outside? This can either be clearly seen by the organizational structure of the state, an example being the Council of State in relation to the Sejm, and then of course a new organ exists, or the collegium confers upon the committee it selects the right to act independently, being empowered to do so by law. Then this committee, although it draws its competence from the authority of the collegium, ceases to be an internal organ, in terms of self-empowerment. When the parliamentary committees issue desiderata to the supreme state organs, they act as an independent organ, since the desiderata are not subject to the approval of the plenum, neither before nor after they are forwarded to the addressee, and furthermore, the representatives of the committee do not submit at any plenary meeting reports on its activities in this field. In this way, the committees have become autonomous and external organs at some point in their work, operating externally. This role should be reflected in the Constitution it-

self. The committees of the Council of State are exclusively internal organs of public authority, since the Council of State always acts outside.

The so-called internal organs of the Council of Ministers are also independent organs, which are usually established by its resolution, but are not always composed only of its members. Only the National Defence Committee has a statutory basis. The Resolution of the Council of Ministers of 30 June 1969 on the procedures for the operation of the Council of Ministers and the Presidium of the Government does not even provide for the Council of Ministers to confirm the resolutions of the Presidium, nor does it provide for the Presidium to report on its activities to the plenary session. The Council of Ministers may, of course, take over the competence of the Presidium, but will only do so in practice if the Presidium itself takes the initiative.

The question arises of whether the Council of Ministers is allowed to establish such organs and entrust them with some of its competences. Our answer is affirmative. The executive and managing organ must be resilient. It seems that the power to create such organs is implicitly contained in the general executive and managing competence of the Council of Ministers. The competence also stems from life's necessity. It would, of course, be advisable for such power to be granted to the government *expressis verbis*.

V

The authors of the definition of an organ of state repeatedly assert that such an organ acts on behalf of the state. There is no doubt that the act of a person or collegium constituting an organ is imputable to the state and as such is a state act. However, in our view, this does not always mean that it can be said that the organ acts on behalf of the state. The legal acts of organs can be divided into two groups: some are legal acts that have an effect within the state apparatus in the continuous process of concrete shaping of the legal system and the system of state organs; at other

times they are acts issued by state organs in relation to natural and legal persons standing outside the state apparatus, addressed to the citizen as a subject or a ward. An example of the first group is the election of deputies in a multi-mandate constituency by a collegium of those with political rights, or the self-organization of the Sejm in the form of the election of the Presidium of the Sejm, etc. An example for the second group is the issuing of judgments and administrative acts to citizens in the form of granting certain powers or imposing obligations. Here the organ addresses the citizen on behalf of the state as a whole, as an empowered entity in relation to a person who in this case is not empowered. It seems that only in this (second) category of acts can the expression “on behalf of” be used, in line with the accepted meaning of the word.

The situation is somewhat different (but at the same time there are some similarities) in the case of acts of state organs under civil law—the conclusion of agreements between the state and the citizen, i.e. between two formally equal entities, in legal terms. The same applies *mutatis mutandis* to relations in the field of international law, where one entity acts in relation to another. And here we can say that an organ acts “on behalf of” the state.

Finally, this term is used for cases where the operation of an organ is attributed to one of many bodies in a complex organisational unit. It can probably be reasonably said that the panel of the Supreme Court acts on behalf of the Supreme Court. From these considerations it follows that the concept of attribution is broader than the concept of “on behalf of”. One should consider whether it would be advisable to abolish this term taken from civil law (currently it is used by Article 734 of the Civil Code), as its meaning in state law is after all different.

In our law, the term “on behalf of” has been aptly used twice: once in Article 47 of the Constitution—the courts issue judgments on behalf of the Polish People’s Republic (this is repeated by the relevant ordinary statutes), and, second, in the acts of ratification of the Council of State, which, on behalf of the Polish People’s Republic, makes it known to

the public that such and such an international convention has been concluded and that the Polish People's Republic undertakes to apply it after its enactment. The term "on behalf of" refers, in essence, to this very obligation.

VI

Finally, the last thing to be addressed in these considerations is the names for groups of organs or the organs themselves in our law. Thus we have the organs of public authority, state administrative bodies, and among them the chief executive and managing bodies; with regard to the Supreme Control Chamber (NIK), and the courts (the Constitution uses the name "Court" in the title of Chapter VI, in the singular form), the term "organ" has not been used in our Basic Law. The title of Chapter VI our Constitution mentions the prosecutor's office and not prosecutors, yet in the final provision about the prosecutor's office it mentions the organs of the prosecution. Does this mean that the Constitution treats the Court and the prosecutor's office as organs, but not courts and prosecutors? Of course, this conclusion cannot be drawn from such formulations. The name "prosecutor's office" is equivalent to "administration". Therefore, the term "prosecuting body" ought to have been used in the title, since the name "administrative bodies" was used, as was, similarly, "judicial bodies". The Supreme Court Act states that the Supreme Court is the supreme judicial body, the Act on the prosecutor's office that the Public Prosecutor-General is the supreme body of the prosecutor's office according to the title of the act itself, and the term "prosecuting bodies" is already used in the Constitution. The term "organ" of the Supreme Control Chamber (NIK) is not used in the Act on State Audit Office, or in the Sejm's resolution on the relations between NIK and the Sejm, nor does the term "organ" appear in the law on common courts (Articles 1 §2, 40 §2, 93, 125 §1 do not apply to courts). This is the best proof that it is possible to write laws without using this word, which often helps the editor of normative texts steer clear of trouble.

In our Constitution there is no general term that is used for all the organs of public authority at the highest level, i.e. the Sejm, the Council of State, the Supreme Control Chamber, the Council of Ministers, and for the ministers and committees that perform the functions of supreme administrative bodies, the Supreme Court, the Prosecutor General. One could use the words “supreme organs of public authority” or “supreme administrative bodies” when referring to supreme supervisory bodies, the judiciary, prosecutors in general, and even more generally all together as “supreme organs of state”. However, a certain obstacle to the use of such terminology is the fact that the legislator said of the Polish Academy of Sciences that it performs the function of a supreme organ of state, and the fact that we cannot include the constitutional organs listed above in the same plane as the Polish Academy of Sciences, where the name “supreme organs of state” is undoubtedly the best.

What does the term “organs of public authority” mean? Are they not all organs, because they perform the functions of authority? They are, of course, organs of authority in the usual sense. If the Constitution, following the Act of 20 March 1950 on local organs of the unified state authority, applied this name to the Sejm, the Council of State (not very consistently), and national councils, it is because the elected bodies should also be terminologically elevated above others, as the being at the head of the entire state organization. The Council of State was given this name rather because it is an emanation of the Sejm and may replace the Sejm in certain spheres, but the use of this name is not as justified as it is with the Sejm and councils. The term “organs of public authority” is appropriate for the “organs of the nation” of a capitalist state. In the March Constitution, the “organs of the nation” were the Sejm and Senate, the President of the Republic, ministers and independent courts. The name “organs of the nation” can still be found in the first acts of the Legislative Sejm of People’s Republic of: the Sejm is “the supreme organ of the nation”, but this no longer applies to the President, Council of State, the government and Courts.

Some doubts may be raised by the name “the chief executive and governing organ of public authority” when it is used to refer to the Council of Ministers. At the level of national councils, the appropriate organ, i.e. the presidium, is defined differently: it is the organ of the national council (Article 42 sec. 1 of the Constitution). If we apply this structure consistently, it should be said that the Council of Ministers is the executive and governing organ of the Sejm and the Council of State, or better still, the executive and governing organ of the organs of public authority. This stylistic clumsiness probably led to the name being simplified and distorted.

What is the situation in other socialist constitutions? The model of the Soviet Union is followed by the constitutions of Bulgaria (1947) and Czechoslovakia (1960); while the constitution of Yugoslavia (1963) is within the framework of the construction of “organ of the organ”, thus the Federal Executive Council is the organ of the Socialist Federal Republic of Yugoslavia; while, rather differently, in the constitution of Albania the government was called the chief executive and governing organ of the Albanian People’s Republic; and then in the constitutions of Romania (1965) and Hungary (1949), the Council of Ministers is the supreme administrative organ, the term which was used and in our Constitution in the title of Chapter 4.

Is the issue really the organ of the organ—organ of the Sejm or the national council? The Sejm and the Council of Ministers, the national council and the presidium (the latter, despite being regulated in a single law) are organs in a separate division, the national council in the division of organs of public authority, the presidium in the division of administrative bodies. There is no indication that an act of the Council of Ministers is to be attributed to the Sejm, and the act of the presidium to the national council. The term “executive and governing organ of the council” is simply a name that expresses very political and legal content. The executive and governing bodies are to maintain a close relationship with the organs of public authority, and through them with the work-

ing people. We also encounter the construction “organ of the organ” in the Sejm’s regulations—the organs of the Sejm. Despite this name, it is a completely different issue here—namely the internal bodies whose acts are not attributed to the collegiate organ within which they exist.

In the past, the name “organs” was often used instead of the term “authorities”. This name was still employed (this is probably at the end of its career) in in the Act on the Organizational Changes of Supreme Authorities of the National Economy of February 10, 1949. The Act of March 20, 1950 refers for the first time to “local organs of uniform public authorities” so not “authority” as “organ”, but as “public authority”. The use of the term “authorities” to denote “organs” will be gradually and completely removed from the Polish lexicon. Clear proof of this is the terminological change which was reflected in the amendment of the law on the Common Court System of 19 December 1963. In Article 1 § 2 of this law, which reads “the common courts do not administer justice in matters transferred by special laws to other courts or authorities”, the word “authorities” was replaced by the word “organs”. However, “authorities” remains in Articles 93 and 125.

VII

The name “organ of state” is ambiguous. We use it in the following meanings: it means a person or collegium endowed with a certain competence; it also means a person (e.g. a minister) or an organizational entity (e.g. the Supreme Court) to whom the acts of a certain group of organs are attributed; and lastly, it means a set of organs connected to each other in terms of organization and competence, a set that includes both organs operating in the name of a person or entity in the sense mentioned above, as well as all other (internal) organs. In the last sense, we can also speak of the Sejm as an organ, when we mean not only the Sejm during a plenary session, but also the group of organs in the Sejm existing together with the Sejm during a plenary session. Lastly, it can be

said that an organ is a part of the state apparatus composed of very different systems of many organs. The second and third meanings derive from the first meaning. One has to start from the fact that an organ is a person or a collegium ...

In addition, the name is used inaccurately in other meanings.¹¹ The name “organ” is very useful, and we resort to it when a better term does not come to our mind.¹²

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11 *Słownik Języka Polskiego* entry: organ, second meaning.

12 This article is almost identical to the paper delivered by the author on May 21, 1971 at the session of state law institutions in Ustroń near Kępno. The author supplemented his work with considerations on the third meaning of the word “organ”, to some extent referring to the statements of A. Mycielski.

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