

CONSTITUTIONAL PRINCIPLE OF COMMON WEALTH IN JUDGMENT OF THE CONSTITUTIONAL TRIBUNAL

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1. INTRODUCTION

Deliberations about issues concerning “common wealth” are regarded here as a matter of research, therefore this issue should be considered on the basis of the concept of this term¹. This issue could be examined from the point of view of interests of various disciplines, especially law. Presentation of the essence of problem, that is the term “common wealth” will be defined as a category of constitutional law. Therefore, the question should be risen up: what is “common wealth” and why this basic and constitutional principle of the political system is only sometimes invoked in the judgment? In addition, there must be the answer to the question: what is the content of principle of “common wealth”?

2. COMMON WEALTH IN THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 1997

Deliberations concerning clarifying the meaning of term “common wealth” are facing some difficulties, not least due to the fact that this term does not have a definition, and what is more, this notion occasionally occurs in the doctrine. The principle of “common wealth” is very rarely invoked in the judgment of the Constitutional Tribunal, and even more so in the court judgment². In Preamble of *the*

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¹ A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego w kontekście myślenia religijnego i orzecznictwa Trybunału Konstytucyjnego* [Reflections on the constitutional principle of the common wealth in the context of religious thought and judgment of the Constitutional Tribunal], *Świat i Słowo* no 1(24), Bielsko Biała 2015, p. 189–215.

² See. W. Brzozowski, *Konstytucyjna zasada dobra wspólnego*, *Państwo i Prawo* 2006, s. 11, p. 17; J. Trzeciński, *Rzeczpospolita Polska dobrem wspólnym wszystkich obywateli* [The Republic of Poland as the common health of all citizens], [in:] J. Góral, R. Hausner, J. Trzeciński (ed.), *Sądownictwo*

*Constitution of the Republic of Poland of 1997*³ was indicated that the principle of “common wealth” in Poland is a subject of duties of citizens towards this idea. In addition, the Preamble claims about “wealth of the Human Family” and “wealth of the Third Republic”, which constitute the elements of common wealth. In art. 1 of *the Constitution of the Republic of Poland* was emphasized that: “The Republic of Poland is a common wealth of all citizens”. This regulation begins 1st Chapter of *the Constitution of the Republic of Poland*, which contains a normative basis of other principles of constitutional state, including the principle of a democratic state ruled by law, but also entirely articulated part of the base law⁴.

In Preamble and in art. 1 of *the Constitution of the Republic of Poland* was used the expression “common wealth” and thus it has been assimilated with the state, and so the Republic of Poland, as the political organization of society⁵. This means, that through this ascertainment, there is a possibility to designate areas of constitutional regulation, which will apply the principle of “common wealth”, which also leads to clarification of its content. The constitutional principle of “common wealth” will often influence the concept of state, so the organization and functioning of social life, including statutory legislation constituted by public authorities, as well as individual, so the rights and freedom, but also the obligations towards the state and the relationship between the state and citizen, and the society⁶.

3. COMMON WEALTH AS APPROPRIATE PATTERN OF CONTROL

The constitutional principle of “common wealth” just as other constitutional principles has a normative character⁷. Therefore, it appears advisable to recall the statement of the Constitutional Tribunal, that stated: “common wealth – beside the democratic rule of legislation, and human dignity is one of the basic values that

administracyjne gwarantem wolności i praw obywatelskich 1980–2005, Naczelny Sąd Administracyjny 2005, p. 453 i 459; J. Królikowski, *Pojęcie dobra wspólnego w orzecznictwie Trybunału Konstytucyjnego* [The concept of the common health in the judgment of the Constitutional Tribunal], [in:] S. Biernat (ed.), *Konstytucja Rzeczypospolitej Polskiej w pierwszych dekadach XXI wieku wobec wyzwań politycznych*, Trybunał Konstytucyjny 2013, p. 159; M. Zubik, *Refleksje nad „dobrem wspólnym” jako pojęciem konstytucyjnym* [Reflections on „common wealth” as constitutional concept], [in:] M. Zubik (ed.), *Prawo a polityka*. Materials from the conference of Law and Administration Faculty of Warsaw University, held on 24th Feb 2006 year, Liber 2007, p. 404.

³ Journal of Laws of 1997 no 78, pos. 483 amendments

⁴ See W. Sokolewicz, *Artykuł 1* [Article 1], L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 5, Wydawnictwo Sejmowe 2007, p. 2–3; M. Piechowiak, *Konstytucyjna zasada dobra wspólnego – w poszukiwaniu kontekstu interpretacji* [The constitutional principle of the common wealth – in searching the context of interpretation], [in:] W. Wołpiuk (ed.), *Dobro wspólne. Problemy konstytucyjnoprawne i aksjologiczne*, Wyższa Szkoła Zarządzania i Prawa im. Heleny Chodkowskiej, Warsaw 2008, p. 124–125.

⁵ See M. Stebelski, *Dobro wspólne a wybrane elementy konstytucyjnego modelu ustrojowego* [The common wealth vs selected elements of the model constitutional political system], p. 140–141; W. Arendt, Ks. F. Longchamps de Bérier, K. Szczycycki (ed.), *Dobro wspólne. Teoria i Praktyka*, Wydawnictwo Sejmowe 2013, p. 138–141.

⁶ See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 193–197.

⁷ *Ibid.*, p. 199.

builds the constitutional order in Poland”⁸. In contrast to the rule of democratic state of law, or human dignity, art. 1 of the *Constitution the Republic of Poland* was only indicated a few times as an appropriate pattern of control by the applicants and the complainant⁹. This is due to the fact that the vast majority of the complaints and applications submitted to the Constitutional Tribunal are initiated by the entities having in mind primarily their private interests or the interests of a particular group.

The individuals and representatives of specific social groups, so the local territorial authorities, trade unions, churches and other religious associations that apply to the Constitutional Tribunal accuse the questioned acts with violation of defined rights or subjective freedom. Due to the fact, that the principle of “common wealth” in certain circumstances may be a ground for restricting their rights and freedom¹⁰, it is not indicated by them, as an appropriate pattern of control. Therefore, it should be noted that the Constitutional Tribunal conducts the control of constitutionality only on request, whereas it cannot examine the defined case from duty, but in the process of judgment it is related to the limits of the submitted application¹¹.

The term “common wealth” is not often appointed by the applicants pattern of control, but it exists in the judgment of the Constitutional Tribunal. The principle of “common wealth” has been referred to by the individual participants in the proceedings, usually the General Attorney or the Marshal of Sejm. It also has happened, that the applicants have indicated as pattern other constitutional regulations, that also contain in its content the term “common wealth”. It is all about the Preamble and art. 25 reg. 3 of the *Constitution of The republic of Poland*, which requires the state to create the relations with churches and other religious organizations on the basis of cooperation “for the wealth of human and the common wealth” and also art. 82 of the *Constitution of The Republic of Poland*, which constitutes the civic duty of fidelity to the Republic of Poland and concern about “common wealth”¹².

⁸ See. Judgment of Constitutional Tribunal of 12th April 2000 (case ref. no. K 8/98); The Judgment of Constitutional Tribunal of 21st Feb 2006 (case ref. no. K 1/05); The Judgment of Constitutional Tribunal of 30th Oct (case ref. no. P 10/06).

⁹ See Pytanie prawne (case ref.no. P 10/01), application of deputies (case ref. no. K 18/04); application of Chairman of Ministers ‘ Council (case ref.no. K 49/05) completed with the decision about discontinuance of the proceedings.

¹⁰ See A. Gołębiowska, *Gwarancje wolności sumienia i religii w Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Edited by Cardinal Stefan Wyszyński University, *Canonic Laws* 54 (2011), no 3–4, Warsaw 2011, p. 33–365.

¹¹ Art. 66 of regulation of 1st Aug 1997 *o Trybunale Konstytucyjnym* (J of Ls of 1997, No 102, pos. 643 amendments); see. A. Gołębiowska, *Refleksje na konstytucyjną zasadą dobra wspólnego...*, p. 193–198.

¹² See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 199–200; J. Królikowski, *Pojęcie dobra wspólnego...*, p. 161.

4. PRINCIPLE ELEMENTS OF “COMMON WEALTH” INDICATED BY THE CONSTITUTIONAL TRIBUNAL

In the result of examined cases the Constitutional Tribunal indicates in its judgments, that the particular components of other constitutional norms also constitute the elements of broadly understood “common wealth”¹³. Therefore, as the example, there can be mentioned, the balance of budget and public finances, including the communal property¹⁴ and ensuring state security and national defense¹⁵, or the continuity of the order of legal system concerning the system of state authorities¹⁶. The Constitutional Tribunal has stated that assurance of the security and defense of the state justifies the limits of all rights and freedom of citizens and it means the necessary to incur directly or indirectly defined duties by citizens, not only in case of a endanger of independence, but also in peacetime¹⁷.

It is the duty of all citizens of state, as “common wealth” to bear public burdens, and with their help, the state protects the highest values of the Polish Republic, the rights of other citizens and ensures the fulfillment of basic values for the fact, that citizens who evade this obligation, they do so at the expense of others taxpayers, and thus violate the principle of “common wealth”¹⁸. Thus, ensuring the proper functioning of public institutions also requires right imposing of the certain restrictions on rights and obligations of persons performing public functions. The idea of “common wealth” implies a certain sacrifice on their part, that can be connected to specific requirements and responsibilities, and the recruitment to the public service must be done as the competition based on clear, specified in regulation criteria¹⁹.

¹³ See. A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p 190–193; M. Granat, *Dobro wspólne w pojmowaniu Trybunału Konstytucyjnego* [*Common Wealth in understanding Constitutional Tribunal*], [in:] W. Arendt, Ks. F. Longchamps de Bériet, K. Szczycki (ed.), *Dobro wspólne...*, p. 127–128.1

¹⁴ *Ibidem*.

¹⁵ See Judgment of Constitutional Tribunal of 7th March 2000 (case ref. no. K 26/98); Judgment of Constitutional Tribunal of 10th April 2002 (case ref. no. K 26/00); Judgment of Constitutional Tribunal of 3rd July 2001 (case ref. no. K 3/01); Judgment of Constitutional Tribunal of 25th Nov 2003 (case ref. no. K 37/02).

¹⁶ See Judgment of Constitutional Tribunal of 3rd Nov 2006 (case ref. no. K 31/06), there has been emphasized that due to the common wealth and other basic values of public policy, there has not been found improper unconstitutionality *vacatio legis* application for the voting of significant changes in the electoral law.

¹⁷ See Judgment of Constitutional Tribunal of 7th March 2000 (case ref. no. K 26/98); Judgment of Constitutional Tribunal of 10th April 2002 (case ref. no. K 26/00); Judgment of Constitutional Tribunal of 3rd July 2001 (case ref. no. K 3/01); Judgment of Constitutional Tribunal of 25th Nov 2003 (case ref. no. K 37/02); Judgment of Constitutional Tribunal of 11th May 2005 (case ref. no. K 18/04); Judgment of Constitutional Tribunal of 30th Sept 2008 r. (case ref. no. K 44/07).

¹⁸ See Judgment of Constitutional Tribunal of 16th April 2002 (case ref. no. SK 23/01); Decision of 30th May 2007 (case ref. no. SK 67/06).

¹⁹ See Judgment of Constitutional Tribunal of 10th April 2002 (case ref. no. K 26/00); Judgment of Constitutional Tribunal of 12th Dec 2002 (case ref. no. K 9/02); Judgment of Constitutional Tribunal of 19th Oct 2004 (case ref. no. K 1/04); Judgment of Constitutional Tribunal of 7th March 2007 (case ref. no. K 28/05); Judgment of Constitutional Tribunal of 11th May 2007 (case ref.

The factors contributing the efficient operation of the state are recognized in the traffic infrastructure²⁰, including the public roads \²¹. The imposition of obligation to a specific energy companies to purchase electricity from unconventional and renewable sources limits the freedom of economic activity, the Constitutional Tribunal has found that the availability of energy resources, also determines the possibility of performing the concept of “common wealth”²².

According to the Constitutional Tribunal the element of “common wealth” is also the natural environment and its protection²³. Therefore, the forests as a component of the natural environment, constitute the national wealth of the great social importance. Therefore, the regulation providing sanctions in the case of felling trees without the required permit in the forest, which is owned by the accused one, does not affect the essence of the right of ownership because it applies only to those forest owners, who do not abide to the rules reflecting the common wealth of using it²⁴.

Different Constitutional Tribunal’s justification clarifies the issue on the solidarity of the social partners as referred to in art. 20 of *the Constitution of the Republic of Poland*, as the obligation of sacrifice all citizens, of both employers and employees with the right extent to their abilities, and certain vested interests for “common wealth”²⁵. In the opinion of the Constitutional Tribunal, the cooperation of social partners requires first of all the access to culture, art and science²⁶.

From the judgment of the Constitutional Tribunal it is stated that, the need to protect the values, that construct various aspects of “common wealth”, in certain circumstances constitute the justification of limiting certain rights and freedom of individuals. According to the Constitutional Tribunal, in the scale of state, the general wealth has a precedence over the wealth of individual, or the particular interests of the group. Thus, the principle of “common wealth” is not the source of specific rights and freedom, on the contrary, it is a counterweight for them. Art. 1 of *the Constitution of Republic of Poland* reveals that, there is a duty to sacrifice some of own interests for the common wealth to the right extent that is appropriate to the abilities ²⁷.

no. K 2/07); Judgment of Constitutional Tribunal of 29th Nov 2007 (case ref. no. SK 43/06); Judgment of Constitutional Tribunal of 2nd Sept 2008 (case ref. no. K 35/06).

²⁰ See Judgment of Constitutional Tribunal of 20th Feb 2002 (case ref. no. K 39/00).

²¹ See Judgment of Constitutional Tribunal of 10th Dec 2002 (ref P 6/02); Judgment of Constitutional Tribunal of 20th July 2004 (case ref. no. SK 11/02).

²² See Judgment of Constitutional Tribunal of 25th July 2006 (case ref. no. P 24/05).

²³ See Judgment of Constitutional Tribunal of 9th Feb 1999 (case ref. no. U 4/98); Judgment of Constitutional Tribunal of 1st May 1999 (case ref. no. K 13/98) Judgment of Constitutional Tribunal of 21st April 2004 (case ref. no. K 33/03).

²⁴ See Judgment of Constitutional Tribunal of 9th Feb 1999 (ref U 4/98); Judgment of Constitutional Tribunal of 15th May 2006 (case ref. no. P 32/05).

²⁵ See Judgment of Constitutional Tribunal of 30th Jan 2001 (case ref. no. K 17/00).

²⁶ See Judgment of Constitutional Tribunal of 8th Nov 2000 (case ref. no. SK 18/99); Judgment of Constitutional Tribunal of 24th Jan 2006 (case ref. no. SK 40/04).

²⁷ See Judgment of Constitutional Tribunal of 10th Nov 2001 (case ref. no. K 28/01); Judgment of Constitutional Tribunal of 20th March 2006 (case ref. no. 17/05); A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 192–196.

The Constitutional Tribunal emphasizes, that art. 1 of the Constitution does not constitute “supernorm”, which can lead to exclude the application, in respect of certain constitutional restriction rights referred in art. 31 reg. 3 of *the Constitution of Republic of Poland*. It follows that, any restriction of freedom or individual rights always requires a statutory form and it can not affect the essence of this right or freedom, being permitted only, if it is necessary for the protection of national security and public order, the environment, health and public morality, and protection of the rights and freedom of others²⁸.

5. IMPLEMENTATION OF PRINCIPLE OF COMMON WEALTH IN A STATE WITH ITS AUTHORITIES

From the judgment of the Constitutional Tribunal it is stated, that the principle of “common wealth” emerges only as a justification for restriction of individual freedom and rights of individuals, so that, the picture of this rule is definitely incomplete. It cannot be reduced to the issue of limiting the freedom and rights of individuals in comparison with the interests of the state²⁹. Therefore, the principle of “common wealth” should be seen in wider context of the institutional and constitutional order, that is in organizational level of the state³⁰. The concept of “common wealth” determinates the acceptance of a particular model of political system, it also influences the steps taken at all levels, especially so, the form and manner of performance of political power, constituting the law, or the efficiency in acting of the public administration³¹.

In the result of acceptance by *the Constitution of Republic of Poland of 1997* the principle of “common wealth” there has been introduced a model of social organization based on the subservient role of the state towards its citizens, their groups and communities. If the individual, family and social organizations are not in a position to achieve full development alone, then it requires a certain institutional and organizational structure with the task of providing to all citizens widely defined wealth, namely: material, cultural, moral and spiritual, necessary to fulfill their needs³². The only reason for the existence of The Republic of Poland and its authorities, including local government structures, is an obligation to implement

²⁸ See Judgment of Constitutional Tribunal of 10th Oct 2001 (case ref. no. K 28/01); Judgment of Constitutional Tribunal of 20th March 2006 (case ref. no. K 17/05); M. Granat, *Dobro wspólne...*, p. 128; A. Gołębiowska, *Wolność sumienia i wyznania w wyrokach Europejskiego Trybunału Praw Człowieka*, Nature-Humanistic University in Siedlce, Współczesne bezpieczeństwo społeczne i jednostkowe, S. Jacyński, M. Kubiak, M. Miękina (ed.), Siedlce 2013, p. 10–26.

²⁹ See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 194–198.

³⁰ See A. Gołębiowska, *Wolność sumienia i wyznania...*, p. 23–27; W. Brzozowski, *Konstytucyjna zasada...*, s. 28.

³¹ W. Arendt, *Dobro wspólne jako kryterium postępowania władzy [Common Wealth as criteria of authorities proceedings]*, [in:] W. Arendt, Ks. F. Longchamps de Bérier, K. Szczycki (ed.), *Dobro wspólne...*, p. 138–158.

³² M. Piechowiak, *Stużebność państwa wobec człowieka i jego praw jako naczelna idea Konstytucji RP z 2 kwietnia 1997 roku – osiągnięcie czy zadanie?*, *Dziennik Sejmowy* 2007, no 4, p. 65–90.

the principle of “common wealth”³³. The state authorities constitute a component of the “common wealth” and also they are a part of it, whereas as, the constitutional value are protected. The Republic of Poland, as a political organization of society is one of numerous elements of the concept of “common wealth”. Therefore, if it is not exhaustive enough, this means, that it should not be identified with “common wealth” of the state³⁴.

The performed role of formula of “common wealth” is confirmed by Polish constitutional practice and discussion in the Constitutional Committee with the concept of “common wealth”. It appears advisable to revise that the *Constitution of 1935* used the term “common wealth” as the objective of all citizens, emphasizing the duties of citizens to state. *The Constitution of The Republic of Poland of 1997* willing to separate from the concept of *The Constitution of April* indicating the primacy of state, before the individual introduces the concept of idiomatic expression of “common wealth”, where the citizen and His organizations determine the important element co-defining the state³⁵.

6. POWER VS COMMON WEALTH

The formula of “common wealth” works bi-directionally, because it obligates the citizen to take care about the state, as a “common wealth”, but also it brings the obligations of the state to citizens³⁶. The citizen is entitled to expect from the public authorities, that The Republic of Poland could be considered by Him personally as a “common wealth”. Thus, the obligation of the completion of “common wealth” by the state that results from art. 1 of the *Constitution of 1997* should be recognized through the spectrum of the democratic legislation state, that has been expressed in art. 2 of the basic law. It follows, that the provision of art. 1 and art. 2 of the *Constitution of Republic of Poland* interpreted together define the Republic of Poland as a state³⁷, but in the scope of democratic procedures there shall be active reflection about “common wealth” of all citizens³⁸.

The obligation to implement “common wealth” in the spirit of democratic state of law requires from the public institutions fair and equitable actions in the interests of society. Transparent and formalized fulfillment of tasks by the state authorities should ensure the regularity and public order³⁹. This thesis is part of a judgment

³³ See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 195–198.

³⁴ See J. Trzeciński, *Rzeczpospolita Polska dobrem wspólnym...*, p. 453.

³⁵ See K. Grzybowski, *Zasady konstytucji kwietniowej. Komentarz prawniczy do części I. Ustawy Konstytucyjnej*, Main Volumes of Gebethnera, Wolffa Bookshop 1937, p. 23; R Chruściak, *Kwestia „dobra wspólnego” w debacie nad przygotowaniem Konstytucji RP z 2 kwietnia 1997* [*The issue of „common wealth” in the discussion for preparation of The Constitution of The Republic of Poland of 2nd April 1997*], [in:] W. Wołpiuk (ed.), *Dobro wspólne...*, p. 13–50.

³⁶ See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 195–199.

³⁷ *Ibid.*, p. 198.

³⁸ See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 193–196.

³⁹ See J. Trzeciński, *Rzeczpospolita Polska dobrem wspólnym...*, p. 458; A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 193–198.

line of the Constitutional Tribunal, which as part of the “common wealth” that ensures the proper functioning of a state has pointed out public activities of public authorities⁴⁰, but at the same time limiting the access of citizens to confidential information⁴¹. In the opinion of the Constitutional Tribunal it is also stable and corresponding to justice legal system, that guarantees the operation of impartial, independent courts and independent judges, punishing criminals and liability for acts violating the rules of law⁴².

The term “common wealth” also marks the limits of the authorities’ actions, while respecting the constitutional principle of subsidiarity. The state and public authorities can use only ratio measures, which will not interfere in the sphere of effective actions of individuals, social groups and local government, while pledging to protect and promote the manifestations of civil society activities⁴³. Democratic state formation requires shared responsibility and cooperation of all, including the public institutions, for “common wealth”. In order to have any value recognized as “common wealth” it must be socially acceptable, because: “There must be at least a minimum social consensus as to the form, manner and content of the taken actions”⁴⁴.

Providing to the citizens and its groups the possibility of participation in the decision-making process allows the state to correct the real content of “common wealth”. In this way, the directive of “common wealth” protects socially accepted and objectively existing values and their hierarchy. The instrument to have it is the institution of the referendum and free elections, which allows them to reflect actually occurring in the society views⁴⁵. Lack of such mechanisms leads to squander of this idea. In order to have all citizens properly contributed to the development of “common wealth”, the state and its authorities must ensure the respect for dignity of every person and implementation resulting for the above rights and freedom⁴⁶. The task of public authority is performance of the principles of equal rights and equality in law, social justice, solidarity and legal right to courts⁴⁷.

⁴⁰ See Judgment of Constitutional Tribunal of 20th March 2006 (case ref. no. K 17/05).

⁴¹ See Judgment of Constitutional Tribunal of 26th Oct 2005 (case ref. no. K 31/04).

⁴² See Judgment of Constitutional Tribunal of 27th Jan 1999 (case ref. no. K 1/98); Judgment of Constitutional Tribunal of 6th March 2002 (case ref. no. P 7/00); Judgment of Constitutional Tribunal of 16th Jan 2007 (case ref. no. U 5/06); Judgment of Constitutional Tribunal of 3rd Nov 2006 (case ref. no. K 31/06); Judgment of Constitutional Tribunal of 25th May 2004 (case ref. no. SK 44/03); Judgment of Constitutional Tribunal of 15th Oct 2008 (case ref. no. P 32/06).

⁴³ See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 197–199; M. Piechowiak, *Dobro wspólne...*, p. 407–409.

⁴⁴ See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 190–192; W. Brzozowski, *Konstytucyjna zasada...*, p. 22.

⁴⁵ See A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 189–191; M. Stębeliski, *Dobro wspólne...*, p. 146–149.

⁴⁶ A. Gołębiowska, *Wolność religijna w ustawie o gwarancjach wolności sumienia i wyznania z 17 maja 1989 r. [Religious freedom in regulation about freedom guarantee of conscience and religion of 17th May 1989]*, [in:] *Współczesne dylematy bezpieczeństwa – uwarunkowania zewnętrzne i wewnętrzne*, J. Pięta, B. Purski (ed.), Warszawa 2012, p. 77–99.

⁴⁷ See Judgment of Constitutional Tribunal of 7th March 2000 (case ref.no. K 26/98); Judgment of Constitutional Tribunal of 12th April 2000 (case ref.no. K 8/98); Judgment of Constitutional Tribunal of 30th Jan 2001 (case ref.no. K 17/00); Judgment of Constitutional

7. CONSTITUTIONAL PRINCIPLE OF COMMON WEALTH VS INDIVIDUAL INTEREST

It cannot be agreed that the perception of “common wealth” opposes wealth of society to the interests of individual. If the state is wealth of all citizens, there is a duty of efficient and impartial problem resolving of all kinds of conflicts and harmonize various vested interests in order to drive the entire community to “common wealth”⁴⁸. The state should be a useful forum of articulation of different social interests, it requires integrative role of public authorities, that also respects the social groups that are missing of a dominant position in the public discourse. Arbitrary exclusion from social life or state action in the name of the particular objectives of favored individuals and social groups would be an abuse of the state, denying the principle of “common wealth”. The state must, while respecting the rights and freedom of the individual, balance the various individual and group interests to ensure constitutional order of implementing “common wealth”.

There are also situations when the interest of individual is incompatible with “common wealth”, thus ensuring the proper functioning of society will require a restriction of individual freedom. The judgment of the Constitutional Tribunal usually puts “common wealth” right after the state or the majority⁴⁹. Moreover, it does not correspond in the judgment “common wealth” with group interest⁵⁰. The value of “common wealth” is not automatically placed against the rights of the individual, group or minority. An example would be the decision of the Constitutional Tribunal declaring the unconstitutionality of the regulation authorizing the shooting down of a plane hijacked by terrorists. The Constitutional Tribunal came here for the protection of the life of a smaller community, so passengers of the plane, and Tribunal admitted that their protection is an expression of “common wealth”⁵¹.

8. CONCLUSION

Summing up the deliberations concerning the constitutional principle of “common wealth”, it should be noted that the concept of “common wealth” is wider concept than it would result from the current judgment of the Constitutional Tribunal in this regard. This is not to underestimate the value of the principle of “common wealth” by the Constitutional Tribunal, but as the rare identifying of it as a model of control⁵². The specifics of the proceedings in the Constitutional Tribunal requires

Tribunal of 7th Jan 2004 (case ref. no. K 14/03); Judgment of Constitutional Tribunal of 11th May 2005 r. (case ref. no. K 18/04); Judgment of Constitutional Tribunal of 20th March 2006 (case ref. no. K 17/05); Judgment of Constitutional Tribunal of 21st Oct 2008 (case ref. no. P 2/08); Judgment of Constitutional Tribunal of 9th Feb 2010 (case ref. no. P 58/08).

⁴⁸ See. A. Gołębiowska, *Refleksje nad konstytucyjną zasadą dobra wspólnego...*, p. 190–194.

⁴⁹ *Ibid.*, p. 195–199.

⁵⁰ M. Granat, *Dobro wspólne...*, p. 130.

⁵¹ *Ibid.*

⁵² J. Królikowski, *Pojęcie dobra wspólnego...*, p. 173–174.

for the further development of the principle of “common wealth” in the judgment, the activity of entities legitimized to institute the control in the Constitutional Tribunal. This demand relates primarily to entities generally legitimized under art. 191 reg. 1 point 1 of the Constitution, so among the others: The President of the Republic of Poland, the Prime Minister, MPs and senators, the President of the Supreme Court, the President of the Supreme Administrative Court and the General Attorney. In an emergency of endanger the values of the constitutional principle of “common wealth”, they have the duty to initiate the constitutionality control of such regulation.

In addition, the systematic study of the appointed authorities of legal system in terms of compliance with the formula of “common wealth” would allow the development of the principle of “common wealth” in the judgment of the Constitutional Tribunal and surround it with more protection. Therefore, in the subject of interest of all of us, there is a postulate, that the public authority, acting in the area of “common wealth” in conditions of pluralism of values and interests, foster the idea of world wide diversity, while promoting a sense of community and not crossing the autonomy of moral law of the entities⁵³.

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⁵³ J. Królikowski, *Pojęcie dobra wspólnego...*, p. 173–174.

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**CONSTITUTIONAL PRINCIPLE OF COMMON WEALTH
IN JUDGMENT OF THE CONSTITUTIONAL TRIBUNAL****Summary**

The article presents the discussion of the constitutional principle of the common wealth, which is not very often invoked in the judgment The Constitutional Tribunal opposes this principle to the wealth of the individual, justifying restrictions of freedom and rights of individuals in parallel with the interests of the state. The concept of the common wealth in the Constitution of the Republic of Poland, however, is a wider concept, therefore, that determines the adoption of the political system based on the subservient role of the state towards its citizens. The Republic of Poland is one of the components of the common wealth and the state is obliged to its performance in the aspect of the democratic rule of state of law.

Key words: common wealth, the principle of common weal, the Constitutional Tribunal, restrictions on freedom and individual rights, the principle of a democratic state of law

**KONSTYTUCYJNA ZASADA DOBRA WSPÓLNEGO
W ORZECZNICTWIE TRYBUNAŁU KONSTYTUCYJNEGO****Streszczenie**

W artykule przedstawiono rozważania dotyczące konstytucyjnej zasady dobra wspólnego, która jest niezbyt często powoływana w orzecznictwie. Trybunał Konstytucyjny przeciwstawia tę zasadę dobru indywidualnemu, uzasadniając ograniczenia wolności i praw jednostek w zestawieniu z interesem państwa. Koncepcja dobra wspólnego w Konstytucji RP jest jednak pojęciem znacznie szerszym, z tego względu, że determinuje przyjęcie modelu ustrojowego opartego na służebnej roli państwa wobec jego obywateli. Rzeczpospolita Polska stanowi jeden z wielu elementów składowych dobra wspólnego, a na państwie ciąży obowiązek jego urzeczywistniania w duchu zasady demokratycznego państwa prawa.

Słowa kluczowe: dobro wspólne, zasada dobra wspólnego, Trybunał Konstytucyjny, ograniczenia wolności i praw jednostek, zasada demokratycznego państwa prawa