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STABILITY AND CHANGES IN THE CONSTITUTION
OF THE REPUBLIC OF POLAND

The current Constitution of the Republic of Poland was passed in 1997. But soon after it entered into force, proposals were put forward to amend it. Some of them were formalised and took the form of Bills amending the Constitution, but the majority of them were projects announced publicly in the form of new texts of the basic law, although they have never been finalised.

Such an intensive trend is worth analysing more deeply: What is the direction of the proposed changes and are they rational? What disadvantageous consequences for law, politics and public life result from the current Constitution? Can the amendment projects constitute guarantees for real and positive changes? Before this analysis can find answers to these and many other questions, it is necessary to present a short characteristic of the Constitution currently in force and the circumstances accompanying its development and adoption.

When in 1989 political system transformation started, one of the objectives was the amendment of the Constitution of 1952, which was gracefully called the ‘Stalinist’ one, which at the beginning was supposed to add it splendour but then became a disgraceful epithet. It introduced a schematic political system based on the accumulation of power, the hegemony of the communist party and its allied political associations, the lack of free elections and the lack of protection of citizens’ rights and freedoms. As early as in 1989 successive amendments introduced changes to the system of the state institutions (President instead of the Council of State, the Senate as an upper chamber of the Parliament, the National Council of the Judiciary safeguarding the independence of courts, partly free elections, and recognition of international law), which together with some earlier democratic changes (the Supreme Administrative Court in 1980, the Constitutional Tribunal and the Tribunal of State in 1982, the Human Rights Defender in 1987) indicated a clearly new direction towards a political system although the old constitution was still in force. The introduction of a constitutional principle of a democratic state of law in December 1989 was of great importance in the field. The Constitutional Tribunal used it broadly in

order to find democratic principles in the text of the old Constitution although they did not actually exist in it. In spite of openness to new axiology and the ease of application of the new principles, and even fully free democratic election held in 1991, the adoption of a new constitution – unlike in other countries of East-Central Europe – was unsuccessful. That is why in 1992 Constitutional Act on mutual relations between the legislative and executive powers and the territorial self-government was passed. The Constitutional Act was for a transition period, which was traditionally called like in Poland of 1919 and 1947 the ‘Small Constitution’¹, which was only a substitute for the new constitution but finally repealed the ‘Stalinist one’ and implemented a new political system of public authorities². The Small Constitution was based on the already developed doctrine and the choice of the future system of government, and the conception of rights and fundamental freedoms. As far as the former area is concerned, it proposed the system that can be called a parliamentary one, as far as the latter is concerned, it introduced a category of human rights and freedoms corresponding to the international democratic standards. As a result, over two years of being in force, the Small Constitution was a ‘test’ on the use of the new principles in the state’s practice and had influence on the provisions of the new constitution with respect to their adoption and the correction.

Simultaneously, a new constitution was being developed. The task was so inspiring that tens of the basic law projects came into being: developed by political parties, scientific centres, associations and individuals³. Formal work was being done based on special Act of 1992 on the mode of developing and passing the Constitution of the Republic of Poland⁴. As a result, apart from the Bills developed by the President and the Senate, a few political parties’ and citizens’⁵ projects were presented for debate before the National Assembly (the two chambers that were to pass a new constitution jointly). Thus, the range of the Bill’s ‘authors’ was considerable, especially as the parties’ projects represented all parliamentary factions⁶. Eventually, the Parliament worked on seven draft

¹ Of 17 October 1992, Journal of Laws No. 84, item 426; see: *Małe Konstytucje. Ustawy zasadnicze okresów przejściowych 1919–1947–1992* [Small Constitutions – basic laws of the transition periods of 1919–1947–1992], (ed.) R. Jastrzębski, M. Zubik, Wydawnictwo Sejmowe, Warszawa 2014.

² The Act temporarily maintained a series of provision of the former Constitution in force, inter alia, the provisions on courts, other organs of the state, citizens’ rights and duties.

³ See, inter alia, collections: M. Kallas, *Projekty konstytucyjne 1089–1991* [Constitutional projects in 1089–1991], Wydawnictwo Sejmowe, Warszawa 1992; R. Chruściak, *Projekty konstytucji 1993–1997* [Constitution projects in 1993–1997], Part I and Part II, Wydawnictwo Sejmowe, 1997.

⁴ Of 23 April 1992, Journal of Laws No. 67, item 336.

⁵ The President and groups of at least 56 members of the National Assembly (the Sejm and the Senate) had the right to legislative initiative, and after the amendment of 1994, also 500,000 citizens. Projects developed by the Senate and political parties were therefore signed and formally filed by groups of MPs. The Trade Union Solidarność developed the citizens’ project.

⁶ When, in connection with the dissolution of the Parliament in 1993, not all the parties won seats in the Parliament, the Constitutional Act gave their projects legal validity so that they were not discontinued. After the election, some parties filed new projects or withdrew theirs.

Bills. After the first reading, all of them were referred to the National Assembly Constitutional Committee composed of 46 MPs and 10 Senators⁷. There were many other people who could present their opinions to the Committee (but could not vote), inter alia, representatives of Churches, civil organisations and state institution: the government, the President, the judiciary, Polish National Bank etc., and experts.

Such a broad representation is very important as it demonstrates the characteristic features of the mode of the work on developing the new constitution. If we add the time spent as well as diligent and laborious debates over every conception, every principle and every provision, it cannot be said that the new constitution was prepared without appropriate reflection (sometimes the mode of work was compared to a series of academic seminars), in the peace and quiet of a comfortable study, in a circle of confidants or tailored. Moreover, there were many disputes, opponents and opposing concepts until a compromise was reached and let a considerable majority of votes⁸ pass the constitution. It was then also approved of in a referendum although it won a small majority this time.

The inspirations for the principles came from many different sources. On the one hand, these were axiology standards and the systems of western democracies as well as the Council of Europe and the European Union (at the time, Poland was already associated with the EU), on the other hand these were Poland's own constitutional traditions of the interwar period and a several hundred years old parliamentary system⁹ and the experience of the period 1992–1997, which was mentioned above.¹⁰ In general, the Constitution of the Republic of Poland of 2 April 1997 introduced a system of government based on the basic principle of answerability to the Parliament (the Sejm), with a dualistic executive power (the Council of Ministers and the President) applying, after the experience from the Small Constitution, a thorough separation of the competence of the two entities, giving the Government the task of carrying out the policy of the state and exempting the Cabinet from the supervision by the President. The President was given competence typical of the head of state, including tasks connected with diplomacy and the supreme command over the Armed Forces. In addition, the President has a few powers within the system of checks and balances (to

⁷ There are 460 MPs in the Sejm and 100 Senators in the Senate.

⁸ The required majority of 2/3 was substantially exceeded in every ballot.

⁹ M. Kruk, *Le parlement dans la tradition constitutionnelle polonaise*, [in:] *L'Etat et le droit d'Est en Ouest*, Mélanges Michel Lesage, Paris 2006, p. 201.

¹⁰ See, inter alia, M. Kruk-Jarosz, *Drafting the Polish Constitution*, Journal of Constitutional Law in Eastern and Central Europe, vol. 2/1995, no. 1, p. 112; M. Kruk, E. Popławska, *Les critères et les prémisses de la réception des modèles constitutionnels lors de la transformation démocratique en Europe centrale et orientale. L'expérience polonaise*, [in:] *Imperialisme et chauvinisme juridiques/Imperialism and Chauvinism in the Law*, Reports presented to a colloquium on the occasion of the 20th anniversary of Swiss Institute of Comparative Law, Lausanne, 3–4 October 2002, Publication de l'Institut suisse de droit comparé, no. 48, p. 111; W. Sokolewicz, *La Pologne en marche vers une constitution démocratique (1989–1997)*, [in:] *L'Etat et droit...*, *op. cit.*, p. 303.

veto Acts, dissolve the Sejm in specified situations), to nominate the Prime Minister and appoint the Council of Ministers, to introduce legislation, appoint judges etc. with no requirement for counter-signature of the Prime Minister (the so-called prerogatives). The position of the Prime Minister towards the ministers is developed following the chancellor's pattern but strengthened by the constructive vote of no confidence. It was supposed to prevent the so-called 'negative majority' in the Sejm and does it successfully. The transformation resulted in the multiplicity of political parties and the proportional electoral system does not eliminate them from the Parliament.

As it was mentioned, the Constitution of the Republic of Poland entered into force in October 1997, and a month later there was the first motion to amend it. It postulated that the parliamentary immunity is removed¹¹. The issue had been discussed in the course of work on the Bill in the Constitutional Committee of the National Assembly and even after the Bill was passed by the Parliament, the President made an amendment to it¹², however, eventually the National Assembly voted it down. The persistence of that postulate does not really surprise because it is repeated in various circles, including parliamentarians, but the matter has never been finalised.

In the context of further proposals for change, that first single amendment was worth mentioning only because of its persistently repeated contents constituting a constant topic of constitutional debates. There were not many such incidental proposals although they referred to rather sensitive social issues as a rule. They include, inter alia, an attempt to strengthen the right to life by establishing the protection of the 'conceived life' aimed at the complete elimination of legal abortion (the regulation of the scope of admissible abortion in Poland constitutes a typical social compromise that was to be deleted by an amendment). This amendment, however subject to legislative work, has not been passed. Draft amendments filed or just proposed by various entities (political parties, parliamentary committees, the Human Rights Defender, public prosecutors) and concerning particular institutions (immunity again, introduction of the Council of State, the Constitutional Council, the Constitutional Convention, the change of the status of the Prosecutor General Office etc.) were numerous and all of them have been ineffective¹³.

¹¹ An MP cannot be subject to criminal proceeding without the consent of the Sejm, but he/she may give one's own consent.

¹² The procedure envisaged two readings of the Bill in the National Assembly and after passing it in the second reading, referral to the President, who was entitled to make amendments to be passed or rejected by the National Assembly (in the third reading, which ended in final ballot). Then the President ordered a referendum.

¹³ Thorough descriptions of the proposals and the mode of work on them can be found in two works: R. Chruściak, *Prace konstytucyjne w latach 1997–2007* [Constitutional work in the period 1997–2007], and *ibid.*, *Prace konstytucyjne w latach 2008–2011* [Constitutional work in the period 2008–2011], both: Wydawnictwo Sejmowe Warszawa, 2009 and 2013, respectively (hereinafter cited as vol. I and vol. II).

However, two amendments to the Constitution have been passed successfully. The first of them resulted from the necessity to implement the European Union institution of the European Arrest Warrant, which the Polish Constitutional Tribunal adjudicated as being in conflict with a ban on extradition laid down in the Constitution in a definite form. This resulted in the change to the constitutional principle in the spirit of the EU law (Article 55). The other amendment that many constitutionalists and politicians received with scepticism as useless or even in conflict with the principle of free elections was banning persons convicted of a crime pursued by a public prosecutor from standing for election (Article 99 item 3). A little journalistic significance of this change was acceptable enough for all the parliamentary parties and they overcame the difficult barrier to a change in the Polish Constitution¹⁴.

Only these two amendments were passed. Politicians soon learned that amendments to the Constitution, especially such that implemented the ideas of one political party or would serve the promotion of that party to the electorate is not possible because of the others' resistance. And none of them has enough strength, even the ruling party, which together with the coalition party can exceed the threshold of the fifty per cent of the Sejm membership. On the other hand, a strong suspicion has been established that the initiation of the procedure of amending the Constitution in order to achieve a particular objective would swing the door open to other 'smuggled' amendments or deform the initial proposal in such a way that the proposer would give it up. That was the case with the President's project concerning the addition of the so-called "European Chapter", i.e. a collection of the provisions on Poland's membership in the European Union in one new chapter (the current Constitution was passed a few years before Poland's accession to the European Union in 2004) and the Constitution contained only a few indispensable provisions with respect to that area¹⁵.

The lack of trust in the possibility to amend the Constitution caused that filing the Bill on the Constitutional Tribunal, the President did not even plan to precede it with a desirable amendment to the Constitution because he expected similarly uncertain prospects that the proposal would succeed¹⁶.

In such a situation a difficult tendency occurred, namely towards filing a considerable number of proposals of full new constitution texts or excessive revisions endorsed by political parties or other entities. The ease of filing such

¹⁴ Apart from other conditions, it requires that the two chambers vote for: the majority of 2/3 in the Sejm and supermajority in the Senate, which is not easy to obtain (four stable parties and temporarily 2–3 small parties, and non-party members).

¹⁵ They concerned the mode of ratification of the Treaty on the transfer of some competences of the state organs to an international organ or an international organisation and awarding the act passed by that organ under the above-mentioned Treaty supremacy when there is a conflict with the statute.

¹⁶ It was described in the former English version of the journal, in an article by M. Kruk, *Polish constitutional court: To change or not to change? (A few reflexions on the new Constitutional Tribunal Bill)*, *Ius Novum* 2/2014, p. 11.

proposals results from the fact that there are no prospects for passing them, which makes it possible to advertise political ideas without the need to take responsibility for them. This way, the opposition ‘changes the political system’ in accordance with its programme, the ruling party ‘fulfils’ promises made during the electoral campaign, other entities having considerable standing in the community look for solutions to some trouble coming into being in the process of governing, and some others ‘exercise’ the skills in developing concepts of various political systems. Such ready-made ‘new constitutions’ are even not filed as Bills. Either its authors do not have the right of legislative initiative (it is the right of 1/5 of the Sejm members, i.e. 92 MPs, the President and the Senate), or they are not convinced that it is worth fighting. If they had accidentally been filed, they had not been passed eventually.

But it is difficult not to have a look at some, at least ten, projects of a new political system. What are these political system ideas? There were seven projects of a new constitution (not taking into account a few versions of some of them), and two excessive revisions¹⁷. The authors were six political parties¹⁸ (some of them already non-existent); three (completely different) projects were developed by the Human Rights Defender¹⁹. Apart from that, a social report on fundamental changes to the system of government²⁰ was announced, and recently one of the newspapers has been publishing a series of publications on successive proposals.

Most of these projects focused on the issue of the system of government, i.e. the relations between the Parliament, the Government and the President. It mainly concerned the relations within the executive power. With respect to that, there were a few options, including extremely radical ones that assumed that there was a system with no President or no Government. Those who were not so radical can be divided into those who, to a larger extent than at present, ousted the President from the executive power and left him with purely representative functions, and those who, quite the opposite, made him the head of the executive power supervising or even managing the Government. This focus on the issue of the system of government results from the fact that in accordance with the present Constitution, the executive power is dualistic, but – unlike in the classic parliamentary system – the head of state is elected in a direct general election, is not answerable to the Parliament but does not have broad executive

¹⁷ Civic Platform’s conclusions, as the only ones, were subject to examination by the Sejm.

¹⁸ Law and Justice (PiS) – main opposition party, Self-Defence of the Republic of Poland (Samoobrona) and the League of Polish Families (LPR) – were in the ruling coalition in the period 2005–2007 – non-existent now, Civic Platform (PO) – ruling party since 2007 (in coalition with the Polish People’s Party – PSL), Sprawiedliwa Polska [Just Poland] – new party, the Democratic Left Alliance (SLD).

¹⁹ Professor Janusz Kochanowski, died in plane crash in Smolensk in 2010, announced the projects in 2009.

²⁰ Association “Doświadczenie i Przyszłość” [Experience and Future], in which the main conceptions of constitutional changes are attributed to three former Presidents of the Constitutional Tribunal.

competence. The internal and foreign policy of the state is the competence of the Government (the Cabinet called the Council of Ministers), which has full standard prerogatives in the area, with the exception of those clearly reserved for other state organs (Article 146 of the Constitution), including those for the President. However, there are not many reserved for the President and the Constitution requires that even in these areas the President cooperate with the Government. It is sometimes the source of tension. The President who enjoys strong legitimacy from a general election has little executive competence in contrast to the Government whose legitimacy is indirect – it is usually a coalition and the electorate have no influence on its composition, i.e. the choice of ministers. The decisions are influenced by the ruling coalition having a slight majority in the Sejm and only when there are no division between the partners or misunderstandings. This original sin of the Constitution²¹ caused that there were situations when the Presidents fought for ‘more’, for ‘what they wanted’ or clearly criticised the Government, or in their official speeches presented their own, not necessarily agreed with the Government, opinion. The dispute over the participation in the European Council meeting is the most memorable one: the Prime Minister did not take into account the participation of the President, however, the latter turned up in Brussels. Eventually, on the Prime Minister’s motion, the dispute was solved by the Constitutional Tribunal²². There were no other such spectacular conflicts, however, during the successive terms there were some Government’s activities or – more often – the President’s ones, which the media and the public perceived as a result of that lack of balance between the legitimacy and competence, as the President’s typical attempt to get out of the straitjacket of the Constitution and to increase his influence on the executive, or to make the Government’s life a little more difficult, or to emphasise his independence²³. It would be difficult, however, to point out a case of evident breach of the Constitution by any of the organs, or such a practice that would mean falsifying the Constitution by actual seizure of the executive power by the President, or obstruction of the executive by persistent conflicts or rivalry between the two parties to the executive power. Nothing like that has taken place, especially as over quite long periods the President, the Government and

²¹ The first presidential general election took place on 25 November (and 9 December – second tour) 1990 when “The Nation” elected Lech Wałęsa in the first fully democratic ballot (the former President was elected based on a political contract in 1989 by the National Assembly). Then it was argued that the nation must not be deprived of the right.

²² The Constitution envisages a possibility that the Constitutional Tribunal might resolve disputes over competence of the state organs (Article 189). Judgement Kpt 2/08 of 20 May 2009; gloss: M. Kruk, *Przegląd Sejmowy* no. 1/2010, p. 174.

²³ It can be noted that in the period of the so-called co-habitation, the Presidents vetoed many more Acts than when the ruling party and the President came from the same party, or when appointing the Government, they emphasised their autonomy but in practice they always appointed the Prime Minister nominated by the party (coalition) that won the election.

the parliamentary majority came from the same or similar political background (both organs came from the same party or a coalition). All the activities of the particular segments of government were and are contained within the constitutional framework although they sometimes cause political (sometimes social) frictions. Thus, if this issue drives amendment-related activeness, the real reasons are rather in the political parties' feeling that they should demonstrate their own ideas of a political system and are looking for solutions: shall the President have more power or shall the Government have it? And, of course, in connection with related issues. It is not very original. Although, as it was already mentioned, one of the opinion-forming, right wing Polish newspapers, *Rzeczpospolita*, started a cycle of publications called *Constitution – time for change* and invites well-known people to present their ideas of a new basic law. Here too, as one can expect, opinions are contradictory in the same spirit although they do not represent party views. But this will be discussed later.

What else do the authors of the new constitution projects propose changing? As always, the issue of MPs' immunity is a perfect topic (as it was mentioned above, postulating that the formal immunity is annulled is very popular). The proposals often contain an idea to decrease the number of members in the chambers²⁴, which was included in the proposals of Civic Platform and has been very popular with the public recently. There were also suggestions that the upper chamber of the Parliament, the Senate, should be dissolved or changed into a chamber representing the interests of territorial self-government (left wing ideas), or composed of the representatives of elites (including bishops, ex-Presidents etc.), which in fact were nothing new because such proposals had been formulated in the 1990s. Another issue is the continually discussed idea of single-member constituencies, i.e. repealing the constitutional principle of the proportional representation electoral system (in 2011, Senators were elected in single-member constituencies and as the results show the hope that the first-past-the-post system would help make elections less party-oriented remained unfulfilled. The widespread opinion that single-member constituencies will be conducive to ensuring real representation makes political parties eagerly support this postulate. However, nobody knows if they are sincere because in order to introduce such a system it would be enough to make a really cosmetic amendment to the Constitution, i.e. delete the word 'proportional' from the catalogue of electoral law provisions (Article 96 item 2 of the Constitution). But this is not happening somehow.

As it was mentioned above, apart from the proposals to change particular constitutional institutions, the dossier also contains a big number of full projects of a new constitution, even such that maintain a considerable majority of the

²⁴ E.g.: from 460 to 300 in the Sejm, and in the Senate from 100 to 44 Senators.

current text, so that the party being the author of the project could boast of an epoch-making achievement of developing a new constitution²⁵. The best-known project was that developed by Peace and Justice, treated by the party and in the public perception as the Constitution of the Fourth (IV) Republic of Poland²⁶. The institution-related part of the project did not introduce radical changes, however, it introduced a specific atmosphere in the sphere of ideology and axiology proposing aggravation of the ‘adjudication’ of the period of communism (the so-called lustration) on the one hand, and on the other hand – attributes of a strong state (the first phase of the project in the 2005 electoral campaign was entitled *Strong President, honest Poland*). Although none of the versions of the Constitution of the IV Republic of Poland has ever been passed, the period when Peace and Justice was in power (2005–2007) is often called the Fourth Republic of Poland.

Three projects of a constitution developed by the Human Rights Defender proposed three different types of government introducing other elements of change in the present system. Their relatively small connection with political realities and the experience of democracy in Poland incline us to assume that they provided the political class with a theoretical offer of political systems to choose from²⁷.

Trying to fulfil its promises of the electoral campaign, Civic Platform also worked on a project of a new constitution, which was even subject to parliamentary procedure, however, inefficiently. The project (also a few projects developed by MPs, since 2005²⁸) was not a full text of a new basic law but was in the form of amendments to several provisions. It was developed based on the former documents edited by think tanks (experts). It decreased the number of MPs and Senators, repealed the principle of proportional elections and changed, in a way favourable for the Government, the relations between the President and the Government. One cannot forget that the final project was created in the difficult period of co-habitation (2007–2010) and the above-mentioned constitutional dispute between the President and the Prime Minister.

Regardless of the changes formalised in the projects, political parties presented their constitutional ideas in their electoral programmes. The issues

²⁵ For example, the project by Self-Defence (farmers’ right wing), see: R. Chruściak, *op. cit.*, vol. I, p. 139.

²⁶ The Preamble to the present Constitution of 1997 introduced a term “the Third Republic”. Having in mind that Poland of the interwar period was called the Second Republic, it was aimed at eliminating the undemocratic Constitution of 1952 from that numerical sequence. The project developed by PiS did not contain the formal name “the Fourth Republic of Poland”, a project by a coalition party – LPR (national right wing) used it. For both projects see: R. Chruściak, *ibid.*, p. 143 and 133 respectively, and 333 (PiS), and also project by PiS, version of 2010: vol. II, p. 530.

²⁷ All three texts: see R. Chruściak, *op. cit.*, vol. II, successively: p. 438, p. 476 and p. 499.

²⁸ See R. Chruściak, *op. cit.*, vol. I, p. 384 and vol. II, p. 411.

were also analysed in scientific works, most often from the point of view of what is worth changing in the Constitution²⁹.

As it was mentioned above, recently the press has been involved in changing the Constitution, drawing the conclusion expressed by the left-wing leader that “the Constitution is not the Bible”³⁰; it has been in force for 18 years so it is time to change it. Some of the opinions mentioned so far may be described by the statements characteristic of them: “It must be clear who rules”³¹. So, to make clear who rules, the ex-President Lech Wałęsa states: “I am for the presidential system”³², and a philosopher involved in the evaluation of public matters responds: “God, save us from a strong president”³³. One can say that it is like getting stuck in a rut again: and some want to have a strong president and others want to have a strong government, but these are only slogans. When it comes to real solutions, there is a lack of consistency, especially – what even worse – a lack of prediction of the consequences of the proposed principles. The third group is composed of those who are against changes: “I discourage you from introducing a revolution in the Constitution”, says the ex-President of the Constitutional Tribunal and adds with conviction that this Constitution “worked well many times”³⁴, and ex-President Aleksander Kwaśniewski adds that the real social problems are the issues that can be solved with the amendments to the Constitution and alluding to the dispute on Act on in vitro, states: “We are not going to introduce in vitro to the Constitution”³⁵. In such circumstances the newspaper carries out a survey and finds out that the citizens – prepared to think this way – want the Constitution to be amended and postulate that the number of parliamentarians is limited (48%), forests are not privatised (35%)³⁶, there are single-member constituencies (31%), the Senate is dissolved (29%), life is protected from conception till natural death (25%), the President has more power (21%) and the Constitution is not changed (only 11%). The survey only lacks information about the citizens’ attitude towards MPs’ immunity, which is strange because immunity has been a constant ‘leitmotif’ in the desired constitutional changes and ... in fact, it should be modernised.

²⁹ One of many publications on that topic is “Constitutional survey”, (ed.) B. Banaszak, J. Zbieranek, Instytut Spraw Publicznych, Warszawa 2011.

³⁰ L. Miller, *Democratic Left Alliance (SLD)*, Rzeczpospolita of 22 April 2015, p. A11.

³¹ K.M. Ujazdowski, member of the European Parliament, Rzeczpospolita of 21 April 2015, p. A7.

³² Rzeczpospolita of 20 April 2015, p. A5; President Lech Wałęsa presented such a view at the beginning of his term (1990–1995) interpreting the constitutional provisions in favour of the President and filing a project of a constitution in this spirit in 1993; thus, he is right that in some sense the Constitution of 1997 laying down separation of the President’s competence from the Government’s (in favour of the Government) was designed ‘against’ him.

³³ M. Król, Rzeczpospolita of 23 April 2015, p. A7.

³⁴ Rzeczpospolita of 28 April 2015, p. C8.

³⁵ Rzeczpospolita of 27 April 2015, p. A6.

³⁶ The Government recently stated it had not been planning that.

However, no new thoughts or ideas that start bothering constitutionalism in the world have appeared either in the earlier reported projects, or in that short press discussion. At least in the field of solidarity, international cooperation, participation of the community in governing, the role of the constitution in horizontal relations (between individuals), modern role of the state towards an individual and many other issues. And if there are to be changes in institutions – let them be made where they are necessary, e.g. with regard to the Constitutional Tribunal³⁷.

But, as it is seen, the debate over the change of the Constitution is going on. If it gets weaker for a moment, another newspaper or a new political party will decide to revivify it and will ask again: the Government or the President? Meanwhile, efficiency or rather inefficiency of the projects and proposals indicates that those who these changes depend on – parliamentarians – are not striving for them. And it is not only because of the lack of consensus. In the research on the mandate to act as a representative conducted in 2010, the questions asked to the MPs of the Sejm were answered with a clear message: Do not change the Constitution³⁸.

But the tendency to postulate changes returned in an intensive form during the electoral campaign – in connection with the direct election of the President of the Republic of Poland³⁹ – in May 2015. One of the motives returned with full strength: single-member constituencies, with which part of the electorate cherish a hope for ousting political parties from power (i.e. “de-cementing the political scene” in order to increase non-party representation of the citizens⁴⁰). Their introduction requires that the constitutional principle of proportional elections be repealed. Under this banner – symbolising the refusal of consent for the current political system and party relations – a rock man, Paweł Kukiz, forced his way onto the political scene winning over 20% of votes cast mainly by young electorate. Soon the President filed a legislative initiative for amending the Constitution in this spirit. This forecasts an intensive continuation of the events entitled “attempts to change the Constitution”; especially as a parliamentary election is taking place this autumn and the issue of the Constitution will be one of the bargaining cards.

³⁷ See considerations cited in footnote 16.

³⁸ M. Kruk, K. Kubuj, M. Laskowska, J. Zaleśny, M. Godlewski, M. Olszówka, *Representational mandate in the Polish Deputies' practice*, Wydawnictwo Sejmowe, Warszawa 2013, p. 110 (publication in English, in addition it contains broad information about the Sejm of the Republic of Poland), p. 323.

³⁹ Since 1990 in Poland, the Nation has elected the President in a direct election.

⁴⁰ The results of the election in the United Kingdom cooled these hopes a little, because they clearly show that first-past-the-post system and single-member constituencies are favourable for a two party system.

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Summary

Soon after the Constitution of the Republic of Poland was passed in 1997, proposals to change it started to appear. On the one hand, they concerned single provisions, e.g. annulment of MPs' immunity; on the other hand, these were proposals of new versions of the whole text. The authors were political parties as well as other entities. Taking into account the fact that the Constitution of 1997 was passed after a few years of legislative work based on many projects and in the course of an intensive debate with the approval of the substantial majority of the National Assembly and then in the referendum, and additionally its principles had been 'tested' in the period of the 'temporary' Small Constitution being in force (1992–1997), such an intensive rush to change it must arouse curiosity about the motives and the directions of the new concepts. Especially as the majority of the proposals were not formalised as legislative initiatives either when the authors were entitled to do so, or when they had no opportunity to do that. As a result, since 1997 the Constitution has been amended twice, in both cases on a small, marginal scale. 2015 is the year of two electoral campaigns (the presidential and the parliamentary ones) and it is seen that the issue of the Constitution will be of great importance. The phenomenon, especially the motives, directions of change and the authors are analysed in the article.

TRWAŁOŚĆ I ZMIANY POLSKIEJ KONSTYTUCJI

Streszczenie

Rychło po uchwaleniu w 1997 r. nowej Konstytucji RP zaczęły pojawiać się propozycje jej zmiany. Z jednej strony dotyczyły one pojedynczych przepisów, jak na przykład zniesienia immunitetu poselskiego, z drugiej strony – były to propozycje nowych wersji całego tekstu. Autorami były partie polityczne, a także inne podmioty. Zważywszy, że konstytucja z 1997 r. uchwalana była w trwającym kilka lat procesie ustawodawczym, na bazie wielu projektów i w toku intensywnej debaty, przy poparciu zdecydowanej większości Zgromadzenia Narodowego i potem w referendum, a ponadto jej założenia wcześniej „sprawdzone” w toku obowiązywania „konstytucji tymczasowej” (1992–1997), tak intensywny pęd do jej zmieniania musi budzić ciekawość, tak co do motywów, jak i co do kierunków nowych treści. Zwłaszcza, że większość propozycji nigdy nie została sformalizowana w postaci inicjatywy ustawodawczej, ani wtedy, gdy autorzy mieli takie uprawnienie, ani wtedy gdy nie mieli na to szansy. W efekcie od 1997 r. konstytucja została zmieniona tylko dwa razy, w obu

przypadkach w niewielkim, marginalnym zakresie. Rok 2015 jest rokiem dwóch wielkich kampanii wyborczych (prezydenckiej i parlamentarnej) i już widać, że problem zmiany konstytucji zyska w niej istotną rolę. Zjawisko to, zwłaszcza motyw, kierunki zmian i autorzy, są przedmiotem analizy niniejszego artykułu.

LA STABILITÉ ET LES CHANGEMENTS DE LA CONSTITUTION POLONAISE

Résumé

Les nouvelles propositions du changement se sont apparues très bientôt après avoir résolu en 1997 la nouvelle Constitution de la République polonaise. D'une part, ils ont concerné les règlements particuliers comme par exemple la suppression de l'immunité parlementaire, d'autre part, il y avait des propositions de nouvelles versions du texte entier. Les auteurs entre autres, étaient les partis politiques ainsi que les autres sujets. En considérant que la constitution de 1997 était résolue pendant le procès législatif de plusieurs années, à la base de plusieurs projets et au cours du débat intense, sous l'appui de la plupart décisive de l'Assemblée nationale et puis le referendum ainsi que les principes «vérifiées» ultérieurement pendant la mise en rigueur de la «constitution provisoire (1992–1997) – cet essor intense pour la changer doit impliquer la curiosité aussi bien aux motifs qu'aux directions de nouveaux contenus. Surtout dans cette situation où la plupart des propositions n'a jamais été formalisée sous la forme de l'initiative législative ni à ce moment où les auteurs avaient cette législation ni à ce moment qu'ils n'yaient de chance. En effet, depuis 1997 la constitution a été changée seulement deux fois, et dans ces deux cas vraiment d'une façon vraiment marginale. L'année 2015 est un période de deux campagnes électorales (présidentielle et parlementaire) et il est déjà visible que le problème du changement de la constitution y jouera un rôle essentiel. Ce phénomène, et surtout ses motifs, les directions du changement et les auteurs forment le sujet de l'article présent.

УСТОЙЧИВОСТЬ И ИЗМЕНЕНИЯ ПОЛЬСКОЙ КОНСТИТУЦИИ

Резюме

Вскоре после принятия в 1997 г. новой Конституции РП (Республики Польша) возникли предложения по её изменению. С одной стороны, они касались отдельных положений, таких, как, например, отмена парламентской неприкосновенности;

с другой стороны, имели место предложения нового варианта всего текста. Предложения исходили от политических партий и иных субъектов. Принимая во внимание, что Конституция 1997 г. принималась в условиях продолжающегося в течение нескольких лет законодательного процесса, на основе многочисленных проектов в ходе интенсивных дебатов, при поддержке подавляющего большинства Национального Собрания, и затем – во время референдума; кроме того, её предпосылки, «проверенные» ранее во время действия «временной конституции» (1992–1997), настолько сильное стремление к изменениям не может не вызывать пристального интереса, – как в отношении мотивов, так и в отношении направления нового контента. Тем более, что большая часть предложений никогда не была сформулирована в виде законодательной инициативы, – ни тогда, когда авторы обладали такими полномочиями, ни тогда, когда у них таких шансов не было. В результате с 1997 г. конституция менялась только два раза, и в обоих случаях в незначительной степени. 2015 год – год двух больших избирательных кампаний (президентской и парламентской), и, по всей видимости, проблема изменения конституции будет играть существенную роль. Данное положение вещей, прежде всего мотивы, направления изменений и авторы, служат предметом исследования и анализа настоящей статьи.