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A brief guide to Poland's political and constitutional system¹

Since the spring of 1989, the democratic transformations in Poland have been defined by subsequent amendments to the Constitution. The grand opening of the transition process was the establishment of the Round Table conference, namely the understanding between the representatives of Poland's ruling communist party and the representatives of the democratic opposition, focused around the Solidarity movement. The amendments to the Constitution of the People's Republic of Poland, adopted on 7 April 1989, which entered into force on 8 April 1989, introduced several fundamental changes to the Polish political system. The amendments restored the following institutions, which had been previously abolished by the communists:

- the Senate, which had, among others, the right to make amendments to laws as well as the right of legislative initiative;
- the office of the President instead of the collegial State Council to date;
- the National Assembly, as a joint session of the Sejm and Senate, having the powers to elect the President;
- the National Judicial Council, as a body with powers to nominate judges.

Several months later, in the next amendment to the Constitution, adopted on 29 December 1989, the principle was introduced that Poland is a democratic state of law, in which power belongs to the nation, provisions on the leading role of the Communist Party were abolished and the freedom to create political parties and conduct business was introduced. In the area of symbolic values, □ it was decided that the former name of the state – the Republic of Poland – would be reinstated in place of the People's Republic of Poland together with the traditional emblem – the white eagle wearing a crown.

The next fundamental changes were introduced by the so-called Small Constitution, adopted on 17 October 1992, which restored the principle of power separation and maintained the bicameral parliament and autonomy of local government, but the shape of the political system of the Third Republic was defined as late as in the new Constitution, which was

¹ Material prepared for the meeting of the representatives of the Committee on Employment and Social Affairs of the European Parliament with the Senate Committee on Family and Social Policy.

adopted by the National Assembly on 2 April 1997, and by the nation in the referendum of 25 May 1997.

The Constitution of the Republic of Poland of 2 April 1997 is a complete act regulating all matters traditionally and generally regarded as constitutional.

In its first part, the Constitution contains the rules and principles on which the state system is built. These include:

1. the principle of sovereignty of the nation;
2. the republican form of the state;
3. a democratic state of law,
4. separation of powers and balance of authority;
5. political representation;
6. the bicameral nature of parliament;
7. political pluralism;
8. mutual independence and the interaction of the state, and churches and other religious associations;
9. human and civic rights and freedoms;
10. the decentralisation of public authority and self-government;
11. the parliamentary form of government;
12. the separateness of judicial authority and independence of the tribunals and courts;
13. the social market economy;
14. business freedom;
15. protection of property.²

The principle of sovereignty of the state is expressed in Article 4 of the Constitution, stipulating that “Supreme power in the Republic of Poland shall be vested in the Nation. The Nation shall exercise such power directly or through their representatives.” The concept of nation is not understood sociologically; this was highlighted in the preamble: “We, the Polish Nation – all citizens of the Republic (...).” Therefore, it is referenced in its political sense, according to which a nation is made up of all citizens of a given country, regardless of their ethnic origin and ethnic identification. The sovereignty of the nation means that the nation has full authority in the country, either directly, namely through the institution of the referendum,

² The typology presented by Wiesław Skrzydło, *Politics of Poland in the light of the Constitution of 1997*, [Ustrój polityczny RP w świetle Konstytucji z 1997 roku] 2nd ed. updated, Kantor Wydawniczy Zakamycze 2000, p. 58 The characteristics of the legal principles presented in the study is based on the cited paper.

or indirectly, through its representatives, elected in a secret ballot through general and direct elections.

The principle of the republican form of the state is included in the official name of the country itself, because “Republic” is derived from Latin, while “*res publica*” means “public matter, thing of the people.” It is also written into the preamble to the Constitution and the Constitution itself. This principle applies to the organisation of the state; it rejects the inheritance of power and its lifetime exercise.

The principle of the democratic state of law was introduced for the first time into Polish constitutional law in 1989; it became a fundamental principle to the political structure of the Polish state. The Constitutional Tribunal refers to this principle in most of its judgements. Its essence can be summarised as follows: the state wants to be governed by law, it ensures the rule of law and places the law above the state³.

A democratic state of law reflects the universal values □□ which are based on international and natural law. Such a state expresses the will of the majority of citizens, simultaneously ensuring the protection of minority rights. This applies equally, for instance, to children’s rights and the rights of national or ethnic minorities.

The principle of the separation of powers and balance of authority refers to the classical separation of power into three areas. Its opposite, namely the principle of unity and uniformity of state power, in which all state bodies are subordinated to one, was accepted in the Constitution of the People’s Republic of Poland in 1952. In the principle of the separation of power, as implemented in the Third Republic, legislative power belongs to the Sejm and the Senate, executive power to the President of the Republic of Poland and the Council of Ministers (i.e. the Prime Minister and the ministers in the government), while judicial power belongs to the independent courts and tribunals. This principle implies a balance of these three powers and the inadmissibility of the dominance of one power, depriving other powers of autonomy.

The principle of political representation means that a nation exercises power through its representatives elected in direct elections. The elected representatives, deputies and senators represent the whole nation and not just the constituency from which they were elected. They exercise a free mandate, so they are not bound by any electoral instructions.

³ Ibidem, p. 60.

Parliamentary elections are dominated by political parties which develop political agendas, submit electoral lists of candidates, organise work in the parliament through the activities of the political parties and enter into coalitions to bring about the formation of a majority and the appointment of the government. In Poland, there is an applicable principle of registration of political parties by the court. In addition to the statute and the composition of the party's representative body, registration requires the provision of lists with the signatures of 1,000 citizens supporting the establishment of the party. Poland currently has 80 registered political parties.

Institutions of direct democracy, which include the referendum and the civic legislative initiative right, also operate in Poland.

According to Article 125 of the Constitution of the Republic of Poland, a national referendum may be held on matters of particular importance to the state. A national referendum is ordered by the Sejm. An absolute majority of votes is required in the presence of at least half the statutory number of deputies in order to make such a decision. A national referendum can also be ordered by the President of the Republic of Poland, but with the consent of the Senate expressed with an absolute majority of votes in the presence of half the statutory number of senators.

A local referendum may be held on the initiative of the body of authority of the territorial self-government unit or upon the motion of the residents. The conditions for announcing the referendum are specified by statute.

A civic initiative in the submission of a bill may be filed by 100,000 citizens who have the right to vote in the Sejm elections.

The bicameral principle of parliament expressed in Article 10, para. 2 of the Constitution of the Republic of Poland provides that legislative power is exercised in Poland by the Sejm and the Senate. Both chambers are treated equally as representative bodies of the nation. This representation is expressed through the parliamentary activities of the deputies and senators, elected by the nation in direct elections. Even though their legal status as representative bodies is not different, the scope and nature of the powers exercised by these chambers differ. This is especially reflected in the performance by both chambers of their basic functions, i.e. legislative, creative and control ones. Both the Sejm and the Senate are endowed with the legislative initiative right and fulfil a legislative function, but the final decision on acts of law rests solely with the Sejm. The creative function, involving the selection of state bodies, is vested in both chambers, whereby the Sejm selects the majority of its bodies independently, while the Senate selects some in collaboration with the Sejm. An

equally important control function involving parliamentary control of the activities of the government and the government administration is attributed exclusively to the Sejm.

The Senate is entrusted with caring for Poles residing outside Poland, taking the legislative initiative in the scope of implementation of the Constitutional Tribunal's judgements and reviewing the petitions referred to in Article 63 of the Constitution. The petition is one of the most important forms of direct participation by the citizens in the process of exercising governance. Citizens may submit requests, proposals and demands in petitions regarding any matters related to public life.

The principle of political pluralism ensures the correct functioning of the representative system based on the activities of political parties, which compete with each other for public support, gain a mandate to participate in national political life and play a role in it which depends on the level of support by voters expressed during elections held in Poland in four-year cycles. The single party rule was in force after the Second World War, during the time of the People's Republic of Poland. In addition to the ruling party – PZPR (the Polish United Workers' Party), two so-called allied factions – PSL and SD (the Polish Peasant Party and the Democratic Party) were also admitted to activities. The first act on political parties after the Second World War, which enabled the introduction of the freedom of association and establishment of political parties in Poland, was passed in 1990. Polish law prohibits the existence of parties, which have programmes referring to totalitarian methods and practices of Nazism, fascism and communism, as well as programmes which incite racial or ethnic hatred, provide for the use of violence to gain power or provide for secrecy of activities and secrecy of structures. The Constitutional Tribunal monitors the conformity to the Constitution of the activities of political parties by adjudicating on the constitutionality of the purposes or activities of the political parties (Article 188 para. 4 of the Constitution).

The Act on Political Parties of 1997, which introduced state budget subsidies for political parties, is currently in force. Subsidies can only be received by those parties which received at least 3% of the validly cast votes in nationwide elections, if they form an electoral committee independently, as well as by parties in electoral coalitions which received at least 6% of the validly cast votes nationwide.

In order to obtain seats in the Sejm, a political party must receive support at a level of 5% of the validly cast votes, whereas coalition electoral committees need to exceed the threshold of 8% of the validly cast votes. The representatives of 7 political parties currently have seats in the Sejm. These are Civic Platform, Law and Justice, the Polish People's Party, the Democratic Left Alliance, Social Democracy of Poland, the Democratic Party and Poland Comes First.

The principle of mutual independence and interaction of the state and churches and other religious associations contains two important dominants. Firstly, it ensures partnership and equal treatment of churches and other religious associations, while secondly – it preserves the impartiality of public authorities in matters of religious beliefs and the outlook of citizens, while ensuring the freedom of their presentation in public life. The principle of independence means the institutional separation of the state and churches, as well as religious associations, discarding the state's dependence on any of the denominations. The Polish Constitution rejected the model of a religious state. Churches and religious associations are independent and sovereign, which does not mean that they have a position which is equivalent to the state. This is because the autonomy of a church means that the church authorities are independent only in religious, doctrinal and ritual matters, as well as the internal organisation of the church. The Constitution emphasises the principle of interaction between the church and state, for the good of the individual and for the good of the entire community.

Respect of human and civic rights and freedoms is a constitutionally guaranteed value □ and its implementation is one of the foundations of the state. In its provisions, the Polish Constitution contains all the important guarantees of individual rights contained in the international agreements ratified by Poland which were developed after the Second World War. The assessment that the *Constitution not only declares the rights and freedoms of individuals contained in it, but also provides an extensive system of their legal protection, refers to the institutional guarantees for their application and emphasises the role of the right of complaint, including the constitutional complaint*⁴ is correct. An important element of individual rights is the assumption that state authorities are obliged to care for the needy through the creation of social rights, which are key to the organisation of a just social order.

While protecting human and civic rights and freedoms, the state is forced to strictly define the limits of interference of the authority and its bodies in the rights of the individual. “Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.” (Art. 31 para. 3 of the Constitution).

⁴ Ibidem, p. 75.

Decentralisation of public authority and territorial self-government is a constitutional norm, enshrined in Article 15 of the Constitution. Decentralisation is understood to be the process of transferring some powers and tasks by the central authorities of the state to subordinate units, while simultaneously equipping them with rights and financial resources to independently make and implement decisions. The preamble to the Constitution contains the obligation to implement the principle of subsidiarity, equally within territorial self-government and within the government administration. It should be emphasised that there is a dualism in Poland's public administration, which is divided into government administration and self-government administration. The principle of decentralisation and subsidiarity applies in both branches of administration.

The territorial self-government was restored in Poland in 1990. It replaced the system of national councils which was in force at the time of the People's Republic of Poland, which were quasi-social representations, fully subordinated to the authority of the ruling party. The first stage was to recreate the communes, as the fundamental and only self-governing bodies. After eight years, in 1998, two more levels of territorial self-government were established – poviats (districts) and voivodships (provinces).

Territorial self-government has its bodies of authority, councils from general and direct elections, as well as its own executive body. The commune's executive body has been elected in local elections since 2002, whereas the executive authorities in poviats and voivodships are still appointed by the respective bodies which adopt resolutions. Each of the levels of self-government has its own system, its own tasks and budgetary resources allocated to it for their implementation. Self-governments may implement tasks entrusted to them by the government administration within the framework of understandings.

The principle of the parliamentary form of government implemented in Poland specifies the relative positions of the principal bodies of state, namely the President, the government, the Sejm and Senate. According to the Constitution, Poland has a parliamentary and cabinet system, with a strong position of the Sejm, relatively small powers of the President and a strong position of the Prime Minister.

After elections, the majority in the Sejm, which is generally formed by a coalition of political parties (there has not been a case of one party gaining an absolute majority), receives the power to appoint the government. The representatives of the coalition apply to the President with a request to appoint the prime minister and to form the government on the prime minister's motion. The President is not legally obliged to appoint a specific person to the office of prime minister, but must reckon with the balance of power in the Sejm.

The role of the Sejm in the formation of the government is reduced to awarding it a vote of confidence. The Sejm also has the right to award a vote of non-confidence to the

whole of the government, as well as the right to award a vote of non-confidence to individual ministers.

In the Polish constitutional system, the prime minister has a strong position; he takes the initiative in appointing and replacing the members of the government and he needs to specify the government's action plan. In managing the government, the prime minister coordinates the work of the ministers, defines their official tasks and is the official head of all the employees of the government administration.

The President is elected in general elections for a five-year term. He does not have specific powers with respect to any of the ministries. However, he is the highest authority of the Armed Forces and therefore bears an influence on matters of national security. The President's advisory body on external and internal state security is the National Security Council. The President's responsibilities also include the ratification and termination of international agreements, as well as the appointment and dismissal of plenipotentiary representatives of the Republic of Poland in other countries and international organisations. The President's powers also include convening extraordinary meetings of the Council of Ministers, which he then chairs: this assembly is called the Cabinet Council.

The principle of separation of judicial authority and the independence of tribunals and courts acquired its final shape as late as in the Constitution of 1997. It was only then that the principle of finality of judgements of the Constitutional Tribunal was introduced, together with the two instances of proceedings before administrative courts. It has given full independence to the judicial authority from the legislative and executive authorities. The right of citizens to a court hearing is associated with the assurance of the principle of judicial independence.

The principles of a social market economy and business freedom are the foundations of the economic system of the Republic of Poland. A social market economy is based on freedom to conduct business, as well as on private property, dialogue, solidarity and cooperation between social partners. The principle of business freedom is not an absolute rule, but it can only be restricted by law and only because of an important public interest.

The Constitution supplements the principle of business freedom with the principles of protection of private property and inheritance rights. The right to property is not absolute. Expropriation is permissible for public purposes and upon just compensation.

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