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The Specificity of the Constitutionalization Process of Systemic Changes in Poland During the Period of Transformations

Keywords: Poland, constitutionalization, constitution, systemic changes

Słowa kluczowe: Polska, konstytucjonalizacja, konstytucja, zmiany ustrojowe

Abstract

The aim of the article is to indicate the prevalent features of the Polish process of constitutional and systemic changes in Poland in 1989–1997. It was assumed that the Polish process of constitutionalization was characterized by a number of specific features which were interrelated and dependent on each another. The aim of the paper is to recognize the phased character of the changes as the first feature of the political transformation process in Poland, whereas compromise should be regarded as its basic attribute. Other specific features (presented in the subsequent parts of the article) include: evolutionary, temporary, and pragmatic nature of the process.

Streszczenie

Specyfika procesu konstytucjonalizacji zmian ustrojowych w Polsce w okresie transformacji

Celem artykułu jest wskazanie głównych, dominujących cech polskiego procesu zmian konstytucyjno-ustrojowych w Polsce w latach 1989–1997. Przyjęto założenie, że polski

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proces konstytucjonalizacji posiadał szereg cech specyficznych, które były ze sobą powiązane i od siebie zależne. Hipotezą artykułu jest uznanie etapowości zmian za pierwszą, a kompromisu za podstawową cechę procesu transformacji ustrojowej w Polsce. Inne cechy specyficzne to: ewolucyjność, tymczasowość oraz pragmatyzm procesu zmian. Cechy te zostały przedstawione w kolejnych częściach artykułu.

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I. Introduction

The 30th anniversary of the process of political transformations in Poland, which took place in 2019, prompts reflection on its course. Thirty years after the onset of the process, one can try to look at it from a “bird’s eye view” and formulate some general conclusions. The eponymous period of transformations of the system covers the period 1989–1997, i.e. the commencement and completion of work on the Constitution of the Republic of Poland.

The aim of the article is to indicate the major features of the Polish process of constitutional and political changes. The following research questions have been posed: what were the main characteristics of the process of constitutionalization of systemic changes in Poland, what made the process specific and how it differed from similar processes in other countries of the region. The paper is not an analysis of the constitutionalization process as such, but a synthetic approach to its basic attributes. Hence, the research methods included synthesis and deduction. The mentioned facts and events are solely examples confirming the author’s assumptions.

Some basic hypotheses are presented in the article. First – the Polish process of systemic transformation was in line with similar processes in other countries of the region; second – on the other hand, it bore unique specific features. The third assumption is that the characteristics of the Polish constitutionalization process can be arranged in a logical sequence, which consecutive features were interrelated, some of them resulted from the others and were interdependent. The subject of the article is to recognize the phased character of the political transformation process in Poland as the main, and the compromise as the basic feature of the changes. Other specific qualities encompass: evolutionary, temporary and pragmatic nature of the process.

II. Stages of the Transformation

The first characteristic feature of the political changes in Poland after 1989 was the fact that they were implemented in stages. The constitutionalization process was spread over time, consisting of several phases, culminating in the establishment of partial changes, which were often thorough and fundamental². It was long and lasted for 8 years, from 1989 to 1997, when the Constitution of the Republic of Poland was passed. The individual stages of the process encompassed partial changes to the constitution – the April amendment of April 7, 1989, the December amendment of December 29, 1989, the Small Constitution of October 17, 1992, whereas the Constitution of the Republic of Poland of April 2, 1997 was the crowning touch of the efforts.

The period 1989–1992 were the first stage of the systemic transformation, its transitional period, consisting in the introduction of systemic principles and solutions typical of a democratic state³. At that time, six amendments to the Constitution of July 22, 1952 were passed, the most important of which included the acts of: April 7, 1989, December 29, 1989, March 8, 1990, and September 27, 1990. The first formal and legal document of systemic changes in Poland was the so-called April amendment of April 7, 1989, establishing new rules of organization and functioning of the supreme state organs (Parliament [Sejm, Senate], President), principles of electoral law, as well as the system of courts.

A political contract, compared to a social contract, developed during the Round Table talks and concluded with signing the Agreements of April 5,

² On the periodization of the Polish political system, also after 1997, see A. Antoszewski, *Przemiany systemu politycznego w Polsce (uwagi metodologiczne)*, [in:] *Rzeczpospolita Polska 1989 – 2009. Problemy wybrane*, ed. K. Leszczyńska, Toruń 2010, pp. 42–47; W. Tomaszewski, *Normatywne podstawy transformacji systemowej w Polsce*, [in:] *20 lat transformacji systemowej w Polsce*, eds. W. Tomaszewski, M. Chełmianiak, Olsztyn 2011, p. 15.

³ On first transitional period of transformation, see i.a. E. Zieliński, *Proces tworzenia demokratycznego ładu ustrojowego w Polsce*, [in:] *Polski system polityczny w okresie transformacji*, eds. R. Chruściak, T. Mołdawa, K.A. Wojtaszczyk, E. Zieliński, Warsaw 1995, p. 11; W. Tomaszewski, *Kompromis polityczny w procesie stanowienia Konstytucji Rzeczypospolitej z kwietnia 1997 roku*, Pułtusk 2007, p. 29; M. Kruk, *Transformacja polskiego porządku konstytucyjnego w latach 1989–1997*, [in:] *Zasady podstawowe polskiej konstytucji*, ed. W. Sokolewicz, Warsaw 1998, pp. 57–64.

1989, played a key role in the Polish transformation process⁴. The Round Table Talks, which took the form of debates between the government and the opposition, determined the shape of systemic reforms and the transformation procedure. Historically, the Round Table was the end of the state of “real socialism” functioning in 1944–1989 and the launch of the process of introducing a democratic republic⁵. It was conditioned both by internal processes (e.g. the rise of Solidarity, the erosion of the system in the 1980s, the economic crisis, the loss of leadership by the Polish United Workers’ Party) and the international situation (particularly M. Gorbaczow’s reforms). The political decisions of the Round Table were then transformed into a legal decision, i.e. the so-called April amendment.

The amendment of December 29, 1989 concerned the changes to be introduced to the constitutional principles of the political and economic system, including: the name and emblem of the state, a definition of the sovereign, introduction of the principle of a democratic state of law and political pluralism. Due to its nature, it was defined as a change of content, concerning ideology and providing new axiological foundations⁶. The amendments to the constitution of 1990 specified the following issues: the institution of local government, the commune (March 8), as well as the general and direct elections of the president (September 27).

The enactment of the so-called Small Constitution of 1992 was an important element of the constitutionalization process. The Small Constitution, or rather the Constitutional Act of October 17, 1992, regulated, as its name indicated, the mutual relations between the legislative and executive powers, in addition to the issues of local government. An original solution was adopted in the Small Constitution, the aim of which was to cut ties with the systemic past and its expression – the Constitution of July 22, 1952⁷. The Parliament upheld and incorporated some of its provisions into the constitutional

⁴ On the Round Table Agreements, see i.a. A. Łuczak, *Porozumienie przy „Okrągłym Stole”*, [in:] *Rzeczpospolita Polska 1989–2009. Problemy...*, p. 7.

⁵ R. Mojak, *Transformacja ustroju politycznegow latach 1989–1997*, [in:] *Polskie prawo konstytucyjne*, ed. W. Skrzydło, Lublin 2002, pp. 65, 73.

⁶ *Ibidem*.

⁷ J. Marszałek-Kawa, J. Piechowiak-Lamparska, A. Ratke-Majewska, P. Wawrzyński, *The Politics of Memory in Post-Authoritarian Transitions, vol 1, Case Studies*, Newcastle 2017.

legal order of the democratic state⁸. In legal terms, the Constitution of July 22, 1952, commonly referred to as the July or Stalinist Constitution, substantially changed in the process of transformation, was formally binding till 1992 when the Small Constitution was proclaimed, whereas some of its regulations remained in force until October 17, 1997. As far as the systemic principles are concerned, the Small Constitution, as T. Mołdawa stated, was a general rehearsal of a specific model of a government system⁹. The changes of 1989–1992, the culmination of which was the Small Constitution, provided the constitutional basis for the political and economic system of the state transformed from an authoritarian regime to a liberal-democratic republic.

The next phase of the constitutionalization process was work on the new Constitution of the Republic of Poland and its adoption on April 2, 1997¹⁰. The project was commenced in 1989, then after the parliamentary elections of 1991 a decision was taken to formalize the results and on April 23, 1992, the constitutional act on the procedure for the preparation and adoption of the Constitution of the Republic of Poland was passed¹¹. The process of preparing a new constitution of the Republic of Poland continued; in comparison with other Central European countries, it was time-consuming due to: the political breakdown of the parliament, the dissolution of the Contract Sejm and the Sejm of the first term, as well as the lack of political unanimity¹². In 1989–1993 the Parliament was unable to make fundamental political

⁸ R. Mojak, op.cit., p. 84; B. Dziemidok-Olszewska, *Pojęcie i geneza Konstytucji*, [in:] *Ustrój polityczny Rzeczypospolitej Polskiej w Konstytucji 1997 roku*, eds. B. Dziemidok-Olszewska, M. Kowalska, K. Leszczyńska, M. Michalczyk-Wlizło, Lublin 2018, p. 19.

⁹ T. Mołdawa, *Problemy konstytucyjne okresu transformacji*, [in:] *Dylematy polskiej transformacji*, ed. J. Błuszkowski, Warsaw 2007, p. 68.

¹⁰ On adoption of the Constitution of the Republic of Poland, see W. Tomaszewski, *Kompromis polityczny...*, pp. 271–341.

¹¹ Constitutional Act on the procedure for the preparation and adoption of the Constitution of the Republic of Poland of 23 April 1992. (Dz.U. No. 67, item. 336). On passing the act, see i.a. R. Chruściak, *Ustawa konstytucyjna o trybie przygotowania i uchwalenia Konstytucji RP – przebieg prac parlamentarnych*, [in:] *Polski system polityczny w okresie transformacji*, eds. R. Chruściak, T. Mołdawa, K.A. Wojtaszczyk, E. Zieliński, Warsaw 1995, p. 93 et seq.; W. Tomaszewski, *Kompromis polityczny...*, p. 139.

¹² T. Słomka, *Transformacja ustrojowa państwa w latach 1989 – 1997*, [in:] *Konstytucyjne organy władzy RP w latach 1989–2011 na tle polskich tradycji ustrojowych XIX i XX wieku*, ed. W. Jakubowski, T. Słomka, Warsaw 2012, p. 60.

decisions because of a lack of legitimacy (1989–1991) or inability to take decisions (party fragmentation in 1991–1993).

III. Evolutionary and Temporary Character

An important specific feature of the Polish constitutionalization process was its evolutionary character. The systemic changes were not radical, they involved a methodical *sui generis* adoption of new rules and abandonment of the old ones. New principles, institutions and bodies were successively established, e.g. political pluralism, separation of powers, free elections, and local government.

During the first stage of transformation, i.e. in 1989, the evolutionary nature of the changes resulted from the establishment of a system of safeguards against the excessively radical actions of the opposition which could undermine the position of the Polish United Workers' Party (PZPR)¹³, e.g. the election of Jaruzelski as president or the election contract. The radicalization of political events in the second half of 1989 resulted in a departure from the agreements between the Round Table and the socialist state (the December amendment). From 1990, the evolution was mainly the result of questioning the legitimacy of the Contract Sejm and the lack of political consensus on the adoption of a new constitution.

Another feature of the constitutionalization process was the temporary nature of the changes resulting from the prolonged work on the new constitution, necessitating the adoption of provisional acts. The adoption of a new constitution was announced during the Round Table talks. In 1989–1991 parliamentary works commenced, however, they were interrupted by questioning the parliament's legitimacy, especially the Contract Sejm, to act as a constituent body. In the next parliamentary term, work had to be commenced right from the starting point. Multiple constitutional and legal changes resulted in the overlapping of the new regulations with the old ones, their internal inconsistency, that is why there was a need, for example, to temporarily regulate the constitutional principles of exercising power.

¹³ T. Słomka, *Między dwiema konstytucjami: kilka uwag o specyfice polskiej ciągłości i zmiany systemowej*, [in:] *Konstytucje polskie z 1952 i 1997 roku: tradycja, instytucje, praktyka ustrojowa*, ed. A. Materska-Sosnowska, T. Słomka, Warsaw 2015, p. 17.

In the atmosphere of political and constitutional uncertainty, the idea of a temporary constitutional act was adopted and the Small Constitution was passed on October 17, 1992. By definition it was an incomplete act, proclaimed for a transitional period “in order to improve the activities of the state authorities, before a new constitution of the Republic of Poland is adopted” (as stated in the introduction to the Small Constitution). The idea of adopting a constitution for the transitional period, in addition to resolving the unstable systemic situation, referred to Polish political traditions, i.e. similar acts of 1919 and 1947.

IV. Compromise

Compromise is recognized as the main feature of the Polish model of systemic transformations¹⁴. It can be noticed at three levels: decision-making (the way of developing and introducing changes), substantive (adopted solutions), and subjective. The compromise of the adopted regulations should be associated with a consensual way of making political and legal decisions. A good example of this is the Small Constitution and the constitutional act on the procedure for the preparation and adoption of the Constitution of the Republic of Poland, developed and adopted by the extremely fragmented composition of the parliament (Sejm) of the 1991–1993 term. Furthermore, the Small Constitution resulted from an agreement between the parliament and President Lech Wałęsa.

The best example of a consensus was the constitutional compromise – it had features of a decision-making, subjective and substantive consensus. The constitutional compromise forced the very assumption that the draft of the new constitution was to be prepared with a wide range of issues taken into consideration. The constitutional law of 1992 authorized the president and a group of 56 members of the National Assembly to propose drafts of the constitution, furthermore the amendment of April 22, 1994 extended this power to a group of at least 500,000 citizens, at the same time admitting the projects which were submitted to the deliberations in the previous term¹⁵. Ultimate-

¹⁴ T. Słomka, *Między dwiema konstytucjami...*, p. 18.

¹⁵ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 1998, p. 25.

ly, the National Assembly received seven drafts of the constitution proposing different visions of the state and the political system. In the course of work on the Constitution of the Republic of Poland, legal solutions from various submitted drafts of the act were considered, however, the Constitution itself is not a reflection or a copy of any of the drafts and was not based on any of them¹⁶.

It is commonly assumed that the Constitution of the Republic of Poland is a product accomplished through the effort and activities of four parties represented in the parliament elected in 1993: the Democratic Left Alliance (SLD), the Polish People's Party (PSL), the Freedom Union (UW) and the Labor Union (UP). The political groups entered into a constitutional coalition in the Constitutional Committee of the National Assembly, which enabled them to develop and introduce new regulations¹⁷. Furthermore, as W. Tomaszewski noted, the consensus in the constitutional coalition in 1993–1997 “was based on political exchange, on the implementation of constitutional solutions acceptable to the largest possible number of political parties. (...) The reached agreement was (...) voluntary, it resulted from mutual concessions justified by the implementation of the common goal, which was the adoption of the Polish Constitution. Thus, the Constitution of the Republic of Poland was enacted due to the political settlement involving the parliamentary majority”¹⁸.

The consensual nature of the process of constitutional enactment made it impossible to adopt a uniform vision of establishing a specific model of the system. Disputes over individual procedures, e.g. the political position of the president, parliament or local government and duplication of the accepted previous solutions, led to setting combinations of various goals and aspirations, as well as creation of hybrid solutions. Although the process of establishing hybrid structures was already visible in the regulations of the April amendment, it further accelerated at the later stages. In the Small Constitution, an interim parliamentary-presidential system was adopted, whereas in the Constitution of the Republic of Poland a modified parliamentary form of government was agreed on, with the empowerment of president and prime minister. One should also emphasize the impact of the current situation and

¹⁶ W Skrzydło, *Ustrój polityczny RP w świetle Konstytucji z 1997 r.*, Kraków 1998, p. 55.

¹⁷ W Skrzydło, *Ustrój polityczny RP...*, p. 55; T. Słomka, *Między dwiema konstytucjami...*, p. 18.

¹⁸ W. Tomaszewski, *Kompromis polityczny...*, pp. 412–413.

political aspirations on the adopted solutions, e.g. the establishment of universal presidential elections in 1990 or president holding the office at a given time, primarily Lech Wałęsa. A particular example of L. Wałęsa's influence on the creation of the institution of president in the Constitution of the Republic of Poland was the inclination of the Constitutional Committee of the National Assembly, chaired by Aleksander Kwaśniewski, to curb the presidential power due to the fear of granting overly broad powers to L. Wałęsa¹⁹. After the change of president in 1995, however, it was too late to make any significant changes.

V. Pragmatism

The transformation of the political system at the turn of the 1980s and 1990s consisted in a “pragmatic adjustment of constitutional provisions to the current needs, systemic and political processes”²⁰. Therefore, it can be concluded that in terms of substantive constitutional regulations, the basic feature was pragmatism which involved: adopting the rules and regulations of developed democracies (which was a necessary condition to join the group of democratic states); duplicating the solutions of the transition period; referring to the domestic heritage and constitutional traditions.

In terms of the adopted principles and detailed solutions, the process of constitutionalization of systemic changes was characterized by establishing detailed solutions and procedures characteristic of developed democratic states. The fundamental principles inherent to a democratic state, such as: sovereignty of the people, a democratic state ruled by law, political pluralism, and separation of powers were introduced gradually. The best example of this is the Small Constitution of 1992 which defined such basic principles as separation of powers or a free representative mandate. It should also be emphasized that the rejection of the main principles of the past regime already took place in the December amendment of 1989.

The subsequent constitutional and legal acts were characterized by repeating the solutions of the transitional period. The Small Constitution adopted

¹⁹ L. Garlicki, *op.cit.*, p. 26.

²⁰ R. Mojak, *op.cit.*, pp. 80–81.

the institutions and procedures already introduced into the constitutional system, for instance, the Senate and general presidential elections; on the other hand, the Constitution of the Republic of Poland of 1997 repeated a number of regulations from the Small Constitution.

In addition, the acts of the transitional period undoubtedly referred, i.a. in axiology, to Polish political traditions, especially the Constitution of May 3 and the March Constitution²¹. This resulted from the assumption that the new solutions should “overlap” with the achievements of the political and legal culture, with the best foundations developed during the several centuries long lawmaking development²². At the same time, the new rules, institutions and procedures must “meet the needs justified by the current achievements of the society (nation)”²³, i.e. they must fall on a fertile socio-political ground. A significant reference to Polish political traditions is the sentence from the preamble to the Constitution of 1997 saying that “we are establishing it »referring to the best traditions of the First and Second Polish Republic«”²⁴.

VI. Final Remarks

Compared to other post-socialist countries, the constitutionalization process in Poland lasted the longest and consisted of the largest number of successive stages. The earliest constitutions were passed in the countries in which parliament consisted of disciplined majorities (Bulgaria, Romania)²⁵. The Polish methodical development of the rules, their evolution, multiple amendments to the 1952 Constitution, and the adoption of provisional acts can be explained

²¹ On Polish political traditions, from the May 3rd Constitution to the Little Constitution, see J. Szymanek, *Tradycje konstytucyjne. Szkice o roli ustawy zasadniczej w społeczeństwie demokratycznym*, Warsaw 2006, p. 121.

²² H. Rot, *Ciągłość i zmiana systemu prawa w warunkach transformacji ustrojowej (tezy)*, [in:] *Problemy prawno-polityczne transformacji ustrojowej w państwach Europy Środkowo-Wschodniej*, ed. H. Rot, Wrocław 1995, p. 10.

²³ T. Słomka, *Między dwiema konstytucjami...*, p. 12.

²⁴ Constitution of the Republic of Poland of April 2, 1997 (Dz.U. No. 78, item 483).

²⁵ B. Dziemidok-Olszewska, *Instytucja prezydenta w państwach Europy Środkowo-Wschodniej*, Lublin 2003, p. 82.

by the parliament's inability to make fundamental decisions and its concern for the stability of the state²⁶.

Some of the features of the Polish constitutionalization process were also characteristic of other countries in the region. In terms of the selection of specific systemic solutions, deciding entities or operating procedures, a great similarity can be noticed. The political model was usually created pragmatically, on the basis of: political traditions, international democratic standards, concepts of political parties and leaders, and with the solutions of the transformation period taken into consideration. As a rule, constitutions were passed by parliaments, a negotiated or consensual way of arriving at solutions was employed (except Russia), the act was sometimes approved by citizens in a referendum (e.g. Estonia, Lithuania, Poland)²⁷.

In Poland, after 1997, debates on the need to amend the constitution have been ignited several times, but so far, the referenda on this matter have been held only twice- in 2006 and 2009. The lack of willingness to propose amendments is, first of all, the result of: the inability of parliamentary groups to make concessions, the difficult amendment procedure, and "the underlying belief of the political elite that the constitution which is currently in force actually works"²⁸.

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²⁶ T. Słomka, *Między dwiema konstytucjami...*, p. 19.

²⁷ On constitutional referenda, see M. Podolak, *Instytucja referendum w wybranych państwach Europy Środkowej i Wschodniej (1989–2012)*, Lublin 2014, p. 295 et seq.

²⁸ T. Słomka, *Między dwiema konstytucjami...*, p. 19.

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