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References to Natural Law in the Constitutions of Modern States

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Abstract

The article is a comparative study of constitutional references to natural law, with a particular emphasis on the Constitution of the Republic of Poland. The findings presented in the study are both of qualitative and quantitative nature. References to natural law, recognized in the constitutions of 48 countries in the world, relate almost exclusively to fundamental human rights and freedoms. Usually, the constitution-maker assigns the title "natural" or "inherent" to all fundamental rights of person or to some of them. In none of the Basic Laws, natural law has been included into formal sources of law, nor its hierarchical relation to positive law shown. No constitution specifies a definite concept of natural law. The authors of the constitutions, speaking generally about natural rights, have not wanted to engage in philosophical and legal disputes accompanying the category of *ius naturale*.

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Streszczenie

Odwołania do prawa naturalnego w konstytucjach państw współczesnych

Artykuł stanowi komparatystyczne studium konstytucyjnych odwołań do prawa naturalnego, ze szczególnym uwzględnieniem Konstytucji RP. Przedstawione w opracowaniu ustalenia są natury zarówno jakościowej, jak i ilościowej. Rozpoznane w konstytucjach 48 państw świata odniesienia do prawa naturalnego dotyczą niemal wyłącznie podstawowych praw i wolności człowieka. Zwykle ustrojodawca miano praw „naturalnych" lub „przyrodzonych" przypisuje albo wszystkim prawom fundamentalnym jednostki, albo poszczególnym z nich. W żadnej z ustaw zasadniczych prawa naturalnego nie zaliczono do formalnych źródeł prawa, jak i nie wskazano jego relacji hierarchicznej do prawa pozytywnego. W żadnej też z konstytucji nie określono konkretnej koncepcji prawa naturalnego. Twórcy konstytucji mówiąc ogólnie o prawach naturalnych nie chcieli angażować się w spory filozoficzno-prawne towarzyszące kategorii *ius naturale*.

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I. Introduction

Rarely, the issue of references to natural law in constitutions is the subject of comparative legal studies[2]. More often, legal scholars analyze the place of natural law in the legal order of a given state, including its constitution, statutes, judicial decisions, or the science of constitutional law[3]. The issue of relation-

[2] H. Schembeck, *Prawo natury a prawo konstytucyjne – porównanie rozwiązań Konstytucji Rzeczypospolitej Polskiej i Austriackiej*, "Gdańskie Studia Prawnicze" 2009, vol. 20, pp. 251–261; G. Dietze, N*atural Law in the Modern European Constitutions*, "The American Journal of Jurisprudence" 1956, vol. 1, No. 1, pp. 73–91.

[3] W. Hassemer, *Naturrecht im Verfassungsrecht*, [in:] *Strafrecht, Strafprozessrecht und Menschenrechte*, eds. A. Donatsch, M. Forster, C. Schwarzenegger, Zúrich 2002, pp. 135–150; M.S. Moore, *Constitutional Interpretation and Aspirations to a Good Society: Justifying the Natural Law Theory of Constitutional Interpretation*, "Fordham Law Review" 2001, vol. 69, No. 5, pp. 2087–2117; E. Carolan, *The Evolution of Natural Law in Ireland*, [in:] *The Invisible Constitution in Comparative Perspective*, eds. R. Dixon, A. Stone, Cambridge 2018, pp. 431–456.

ships between positive and natural law raises an even wider interest both in jurisprudence, as well as outside it[4].

The aim of the study is to determine the nature, specificity, and number of references to natural law in the constitutions of modern countries[5], with a particular regard to the Constitution of the Republic of Poland (RP). Constitutional references to natural law have been subjected to a comparative synthesis. Some identified similarities and differences in the manner of incorporation or reference to *ius naturale* in the Basic Laws have been shown.

For the purposes of the article, it has been assumed that in order to classify a specific constitutional human right or freedom as a natural right the literal reference to it as "natural" or "inherent" will be decisive[6]. Both these terms reveal a supra-positive source of origin for a given human right, i.e. the binding force of this right is not derived from a normative act. The constitution-maker, speaking about the natural or inherent nature of a particular right, thus communicates that he is not its creator, but only he confirms and guarantees this right. On the other hand, the natural-law character of rights is not necessarily indicated by defining such rights in the categories of "inalienable", "undeniable", "inviolable", "imprescriptible", "indivisible" or "sacred" rights. Indeed, natural rights have these qualities too – although "inviolability" with respect to some natural rights is of a gradual nature – but these features may also refer to other purely positive rights and legal provisions. Similarly, the recognition that the right belongs to a person "from birth" – as stated in the constitutions of several countries[7] – is not a determinant of its inherent-law nature either[8].

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[4] R. Hittinger, *Natural Law in the Positive Laws: A Legislative or Adjudicative Issue?*, "The Review of Politics" 1993, vol. 55, No. 1, pp. 5–34.

[5] The analysis considers both "formal" constitutions and – in the case of several countries – normative acts constituting the "material" constitution.

[6] For the needs of this study the English term "inherent" and the Spanish terms "inherentes" and "innato" are used as synonyms of "natural".

[7] Azerbaijan (Art. 24.2); Kyrgyzstan (Art. 16.1).

[8] It can be said that it is an interpretation rather and not a simple translation in case of a Polish translation of the Constitution of the Russian Federation by Andrzej Kubik (Warsaw 2000). The sentence "основные права и свободы человека неотчуждаемы и принадлежат каждому от рождения" in the Polish translation takes the form of "the fundamental human rights and freedoms are inalienable and they belong to everybody by birth", while the phrase

A detailed assessment of the legal relevance of constitutional references to natural law goes beyond the framework of the study[9]. A contentious issue in the Polish legal doctrine is to what extent – and whether at all – natural law limits the constitution-maker and the legislator. While some authors take a view that natural law is not a "limiting frame of reference"[10], others believe that natural law affects positive law to "a considerable extent", even legitimizing "questioning of constitutional norms"[11]. A similar double voice can be found in the foreign legal scholarship[12]. Outside the scope of the article is also the issue of the operationalization of constitutional references to natural law in judicial decision-making process[13].

II. Natural Law in the Polish Constitution of 2 April 1997

The issue of referring to natural law in the constitution has been raised since the beginning of the 1990s as part of work on the preparation of a new constitution[14]. An explicit reference to natural law was found in the civic draft version of the constitution prepared by the Independent Self-Governing Trade Union Solidarity

"от рождения" literally means "from birth" The change of the preposition has a certain significance. The phrase "by birth" would indeed point to a supra-positive source of an individual person's rights and freedoms, while the phrase "from birth" does not necessarily have such a connotation.

[9] B. Banaszak, M. Jabłoński, *Charakter i znaczenie prawno-naturalnych odesłań w Konstytucji RP (wybrane zagadnienia)*, "Przegląd Prawa i Administracji" 2005, No. 71, pp. 7–28.

[10] K. Działocha, *Komentarz do art. 8 (uwaga nr 3)*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, eds. L. Garlicki, M. Zubik, Warsaw 2016, vol. 1.

[11] M. Piechowiak, *Elementy prawnonaturalne w stosowaniu Konstytucji RP*, "Przegląd Sejmowy" 2009, No. 5, pp. 86–97.

[12] I. Iban, *God in Constitutions and Godless Constitutions*, [in:] *Religion, Constitution. Freedom of Religion, Equal Treatment, and the Law*, eds. W. Cole Durham, S. Ferrari, C. Cianitto, D. Thayer, Farnham 2013, p. 39, 45; G.J. Jacobsohn, *An unconstitutional constitution? A comparative perspective*, "International Journal of Constitutional Law" 2006, vol. 4, No. 3, pp. 460–487.

[13] On natural law significance in the Irish case law see: A. O'Sullivan, P. Chan, *Judicial Review in Ireland and the Relationship between the Irish Constitution and Natural Law*, "Nottingham Law Journal" 2006, vol. 15, No. 2, pp. 18–36.

[14] K. Jonca, *Spory wokół doktryny prawa naturalnego w okresie powstawania Konstytucji Rzeczypospolitej Polskiej (1989–1997)*, "Czasopismo Prawno-Historyczne" 2002, No. 1, pp. 283–300.

(NSZZ "Solidarność"). Its preamble stated on the rights created by citizens "based on natural law"[15]. In the draft version of the constitution adopted by the Constitutional Committee of the Senate on 22 October 1991, the parents' right to raise their children according with their beliefs was explicitly referred to as "a natural right" (Art. 31 (3)). In addition, four other provisions stated that human rights (and freedoms) are "inherent" (Art. 10, 11, 17) and "derive from inherent dignity" (Art. 2).

On 21 March 1997, the National Assembly rejected by an overwhelming majority (417–45–14) an amendment pursuant to which the Art. 8 (1) of the Basic Law was to define the constitution as the highest enacted law of the Republic of Poland, above which natural law would stand.

Critics of recognizing the constitution as "the highest enacted law" pointed out that such wording suggested and even prejudged that, apart from the constitution, another law was in force in the state, namely natural law[16]. This interpretation raised doubts.

Firstly, even if in the Art. 8 (1) of the constitution it was regarded as "the highest enacted law", the understanding of this provision would have to take into account the provisions of Chapter III determining the system of law sources as part of the systemic interpretation. On the other hand, Art. 87 mentions only acts of positive law among the sources of law. Secondly, if one assumed that the phrase "the highest enacted law" presupposed that also other sources of law were in force in the country, this phrase *per se* would not determine, however, what "other law" was at stake. Then it would be arbitrary to reduce the category of "other law" to natural law only, but not, for example, to religious or customary law. Thirdly, the attempted controversial formulation referred to the nature of the constitution as a type of source of law, but not to its hierarchical relationship to the sources of law other than positive law. Therefore, it did not necessarily communicate that natural law (or religious, customary law) was in a higher position than the constitution and other normative acts[17]. A lack of reference to "enacted law" in the final version of Art. 8

[15] http://www.sejm.gov.pl/Sejm7.nsf/wypowiedz.xsp?posiedzenie=zn3&dzien=6&wyp=0&kad=2.

[16] P. Winczorek, *Problem prawa naturalnego w dyskusjach konstytucyjnych*, [in:] *Powrót do prawa ponadustawowego*, ed. M. Szyszkowska, Warsaw 1999, pp. 131–137.

[17] K. Działocha, *Konstytucyjna koncepcja prawa i jego źródeł w orzecznictwie Trybunału Konstytucyjnego*, [in:] *Księga XX-lecia orzecznictwa Trybunału Konstytucyjnego*, ed. M. Zubik, Warsaw 2006, p. 306.

(1) does not change the fact that the Constitution of the Republic of Poland is the highest enacted law, and not some other law.

It is true, however, that supporters of the introduction to the text of the Basic Law of the wording of the constitution as "the highest enacted law" indeed attributed to it this meaning, according to which, next to the positive law in Poland, natural law was to be in force, and even take precedence over positive law. It remains an open question to what extent the motivations, intentions, expectations and associations of individual members of the National Assembly could affect the interpretation of Art. 8, leading to other conclusions than the indicated results of the linguistic and systemic interpretation?

The "motivations, intentions, expectations, associations" could possibly be included in the framework of a historical interpretation, and more specifically this type of historical interpretation, which is based on an analysis of the so-called legislative history (*in concreto* of constitution-making history). The historical interpretation, however, plays a subsidiary role. For this reason, it would be doubtful to give it priority over the results of the linguistic and systemic interpretation. In addition, it is impossible to consider voices of over a dozen deputies and senators during the National Assembly meeting as authoritative for the constitution-maker itself.

Defining the constitution as "the highest enacted law" is something unheard of in the world constitutionalism. Natural law is not explicitly mentioned in the constitution of any state – including the Vatican City State – as a source of law.

Even more strange would be a clear reservation in the text of the Basic Law on the superiority of natural law over the constitution. Such a wording would be a source of many confusions, undermining the legal certainty and security. First of all, it would result in doubts about its operationalization (functionality). For example, would the Constitutional Tribunal be due to review the compliance of statutes, and even the constitution itself, with natural law, and if so, based on what criteria and how understood natural law? In jurisprudence, several concepts of natural law are distinguished, in many respects significantly differing from each other. There is no agreement in the legal scholarship regarding the source of natural law (cosmological, theistic and humanistic concepts), its changeability in time (static, variable and dy-

namic concepts) or the nature of natural-law norms (material and procedural concepts)[18]. The problem would be to reconstruct individual norms of natural law as a control standard of judicial review. At the same time, decreeing the superiority of natural law over the constitution would call into question the sovereignty of the nation as the subject of supreme power, i.e. also the supreme legislative (constitution-making) power[19].

The only example of determining vertical relationship of positive law and natural law in the constitution – and not in regards to natural law in general, but a specific example of it – is the Art. 41 (1)(1) of the Constitution of Ireland. In this provision, family rights are defined as "superior to all positive law".

The Constitution of the Republic of Poland of 2 April 1997 does not refer explicitly to natural law. However, one should treat as the reference to natural law the wording of Art. 30 stating that "the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities"[20]. The preamble also shows "inherent dignity". In the light of Art. 30 it can be stated that the Constitution of the Republic of Poland has adopted the "natural-law justification for fundamental freedoms and rights" of a person[21].

Single authors attribute the natural-law character not only to human dignity and human rights and freedoms embedded in it, but also to, for example, particular preamble provisions[22], constitutional categories of freedom and equality from Chapter II[23] or the common good clause[24].

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[18] G. Maroń, *Wstęp do prawoznawstwa*, Rzeszów 2011, pp. 24–26.

[19] J. Jaskiernia, *Rozumienie niektórych norm konstytucyjnych o charakterze klauzul generalnych w świetle prac konstytucyjnych*, "Gdańskie Studia Prawnicze" 1998, vol. 3, pp. 11–13.

[20] Dz.U. No. 78, item 483.

[21] J. Potrzeszcz, *Filozoficzne podstawy praw człowieka w Konstytucji Rzeczypospolitej Polskiej z 1997 roku*, "Roczniki Nauk Pawnych" 2002, No. 1, p. 19.

[22] Z. Witkowski, I. Wroblewska, *Wątki prawnonaturalne w preambule do Konstytucji RP z 2 kwietnia 1997 roku*, [in:] *Nam hoc natura aequum est… Księga jubileuszowa ku czci profesora Janusza Justyńskiego w siedemdziesięciolecie urodzin*, ed. A. Madeja, Toruń 2012, pp. 569–590.

[23] A. Bałaban, *Polskie problemy ustrojowe. Konstytucja, źródła prawa, samorząd terytorialny, prawa człowieka*, Zakamycze 2003, LEX No. 369135409.

[24] M. Piechowiak, *Prawnonaturalny charakter klauzuli dobra wspólnego*, [in:] *W poszukiwaniu dobra wspólnego*, eds. A. Choduń, S. Czepita, Szczecin 2010, pp. 600–618.

The Polish constitution-maker has not advocated any specific iusnaturalistic concept of fundamental rights and freedoms. The reference to Christianity and God in the preamble cannot be regarded as an indicator of the fact that the constitution has adopted a religious (Christian or even Catholic) doctrine of natural law. Although individual members of the National Assembly were inspired by Thomism or Neo-Thomism[25], as in the social perception natural law was perceived in the Thomistic spirit or directly through the prism of "the axioms of the Catholic Church"[26], but such a restrictive understanding of natural law was not reflected in the wording of Art. 30. An inclusive formulation was used which can meet the expectations of various concepts of natural law supporters. Thanks to this solution, the constitution can perform an "integration function for the entire nation"[27].

III. A Comparative Study of Constitutional References to Natural Law

References to natural law appear in the constitutions of 51 countries out of 193 countries of the world that are members of the United Nations, i.e. in about a quarter of the total states. Both in absolute numbers and in proportional terms, African countries dominate (20 out of 54, i.e. 37%), followed by the countries of both Americas (12 out of 35, i.e. 34%), European countries (10 out of 43, i.e. 23%), the countries of Oceania (3 out of 11, i.e. 21%), and Asian countries (6 out of 47, i.e. 13%)[28]. This group includes only demographically Christian (40) or Muslim (8) states.

It happens sporadically that the constitution-maker specifies the essence of natural rights, in some way *quasi*-defining them. This solution appears

[25] J. Potrzeszcz, *Filozoficzne…*, p. 26.

[26] J. Jaskiernia, *Spór o istnienie naturalnego porządku prawnego*, "The Peculiarity of Man" 2018, No. 27, p. 120.

[27] L. Garlicki, *Komentarz do art. 30 (uwaga nr 13)*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz…*

[28] This division uses a geographical rather than a political criterion. In the case of the countries which territory lies on two continents, their classification was determined by the fact where the greater part of the country was located. For this reason, Egypt was included into African countries, and Turkey and Kazakhstan into Asian states. The only exception was made to Russia, treating it as a European state, not an Asian one, because most of its citizens live in the European part of the country.

in the Constitutions of Ireland and Uganda. In the first case, the Basic Law states that the rights of the family as "the natural primary and fundamental unit group of Society" are "antecedent" to "all positive law". Similarly, "antecedent to positive law" is the right of private ownership[29]. The Constitution of Uganda clarifies that the iusnaturalistic character of the human rights and freedoms means that they are "not granted by the State"[30].

In the constitutions of the 12 states, human rights and freedoms in general are explicitly referred to as "natural rights" or "inherent rights"[31]. More often references to natural law in the constitutions rely on the direct naming of individual rights and freedoms as "natural" or "inherent".

In twelve constitutions, the status of "natural" ("inherent") right is assigned to the right – usually also to the obligation – of the parents to raise, care and educate their children[32]. Less often, because only in the constitutions of 7 countries, the right to life is named as natural (inherent) right[33]. The Constitution of Afghanistan additionally stresses that it is a "gift of God", and the Constitution of Paraguay guarantees right to life, in general, "from its conception".

In the constitutions of five states, the personal freedom is recognized as natural (inherent)[34]. Basic Laws of four countries define the right to ownership as natural (inherent) right[35]. Other rights and freedoms in the constitutions

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[29] Ireland (Art. 41.1.1° and Art. 43.1.1°).

[30] Uganda (Art. 20.1).

[31] Czech Republic (preamble to the Charter of Fundamental Rights and Freedoms), Dominican Republic (Art. 38), France (Declaration of Human and Civic Rights of 1789), Spain (Art. 10.1), Liberia (Art. 11a), Lithuania (Art. 18), Luxembourg (Art. 11.1), Nicaragua (Art. 46), Slovakia (Art. 134.4), Turkey (Art. 12), Uganda (Art. 20.1), Marshall Islands (preamble).

[32] Burkina Faso (Art. 23), Burundi (Art. 30), Central African Republic (Art. 7), Chad (Art. 42.1), Democratic Republic of the Congo (Art. 40), Eswatini (Art. 29.7.c), Gabon (Art. 1.16), Ghana (Art. 28.1.c), Germany (Art. 62), Kazakhstan (Art. 27.2), Philippines (ch. 2 – Art. 12; ch. 14 – Art. 2.2), Senegal (Art. 20.1).

[33] Afghanistan (Art. 23), Lesotho (Art. 5.1), Liberia (Art. 11(a)), Nicaragua (Art. 23), Paraguay (Art. 4), South Sudan (Art. 11), Tajikistan (Art. 5).

[34] Afghanistan (Art. 4), Egypt (Art. 54), France (Art. 2 Declaration…), Liberia (Art. 11(a)), Lithuania (preamble).

[35] France (Art. 2 Declaration…), Guatemala (Art. 39), Ireland (Art. 43.1), Liberia (Art. 11(a)).

of single states, i.e. the right to education and culture[36], the right to personal integrity[37], the right to personal security[38], the right to resist oppression[39], the "right and power to lead an honourable life and to improve his/her material and spiritual wellbeing"[40], the right of citizenship[41], and honor[42] are referred to as natural (inherent).

The constitutions of 16 countries, including Poland, describe dignity as an "inherent" property of a human person[43]. The Constitution of Tajikistan defines dignity as a natural right[44], and the Constitution of South Sudan mentions the inherent right to dignity[45]. The definition of dignity as inherent is also known to international law[46].

Analogous provisions to Art. 30 of the Polish Constitution are contained in the Basic Laws of the Dominican Republic, Jamaica and Malawi, which, on the one hand, refer to the inherent dignity of a human person, and on the other hand, it is this dignity that is defined as the source of human rights and freedoms[47].

It happens that in the constitutions the name "natural" is assigned not only to the fundamental rights of a person, but also to some collective rights which belong to the state, society or nation *in gremio*[48], such as

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[36] El Salvador (Art. 53).

[37] South Sudan (Art. 11).

[38] France (Art. 2 Declaration…), Liberia (Art. 11(a)).

[39] France (Art. 2 Declaration…).

[40] Turkey (preamble).

[41] Panama (Art. 161.10).

[42] Tajikistan (Art. 5).

[43] Dominican Republic (Art. 38), Honduras (Art. 68.3), Jamaica (Art. 13.1(b) and Art. 14.5), Kenya (Art. 28), Malawi (Art. 12.1(d)), Maldives (Art. 57), Namibia (preamble), Nicaragua (Art. 23.2.1), New Zealand (Art. 23.5 Bill of Rights Act 1990), Papua New Guinea (Art. 36.1, Art. 37.17), Poland (Art. 30), RSA (Art. 10), Saint Kitts and Nevis (preamble), Seychelles (preamble), Venezuela (Art. 46.2), Zimbabwe (Art. 3.1(e), Art. 50.1(c), Art. 51).

[44] Tajikistan (Art. 5).

[45] South Sudan (Art. 11).

[46] Universal Declaration of Human Rights of 10 December 1948 (preamble), International Covenant on Civil and Political Rights of 19 December 1966 (preamble, Art. 10), American Convention on Human Rights of 22 November 1969 (Art. 5.2), African Charter on Human and Peoples' Rights of 26 June 1981 (Art. 5).

[47] Similarly: preamble to ICCPR.

[48] Croatia (Historical Foundations); United Kingdom (Act of Settlement (1700) states that "Laws of England are the Birthright of the People").

the right to "to live and create freely in the land of their fathers and forefathers"[49], to establish a framework of government[50], to self-determination[51]. In the Constitutions of Ireland and Luxembourg, a family is also indicated alongside man as a subject and a beneficiary of natural right[52]. The first one, furthermore, mentions the natural rights "of all children"[53].

The attribution of natural rights to states and nations also is known to acts of international law, such as the "inherent right of individual or collective self-defense"[54] or the "inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources"[55].

Two constitutions mention natural (inherent) justice. The Constitution of Kenya provides that the court, when considering the case "while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities"[56]. Similarly, the New Zealand Bill of Rights states that "every person has the right to the observance of the principles of natural justice by any tribunal or other public authority"[57].

The constitutions of 5 Latin American states stipulate that the rights and freedoms listed in them do not exhaust the category of human rights, which also includes other rights "inherent to a human person" (*inherentes a la persona humana*)[58]. Therefore, those listed in the constitution do not form the *numerus clausus* category. A lack of provisions regulating these rights is not grounds for their denial. A similar provision is contained in the Constitution of Ghana, however, not speaking about the "innate" rights of a human person, but "inherent in a democracy and intended to secure the freedom and dignity of man"[59].

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[49] Lithuania (preamble).

[50] Liberia (preamble).

[51] Slovakia (preamble). Similarly: Papua New Guinea (preamble).

[52] Luxembourg (Art. 11.1), Ireland (Art. 41.1.1).

[53] Ireland (Art. 42A(1)).

[54] Charter of the United Nations of 26 June 1945 (Art. 51).

[55] Art. 47 ICCPR.

[56] Kenya (Art. 22.3(d)).

[57] New Zealand (Art. 27(1) Bill of Rights Act of 1990).

[58] Colombia (Art. 94), Guatemala (Art. 44), Paraguay (Art. 45), Uruguay (Art. 72), Venezuela (Art. 22 i 24). Cf. American Convention on Human Rights (Art. 29c).

[59] Ghana (Art. 33.5).

None of the constitutions containing a reference to natural right associates this right with a particular iusnaturalistic theory. It is not allowed to reduce *ius naturale* to religiously profiled law and to see it as a necessarily theistic category[60]. In judicial decision-making practice, however, it sometimes is possible to interpret natural law through the prism of a specific philosophical and theological concept, e.g. the Supreme Court of Ireland has referred the concept of natural rights to the Thomistic philosophy[61].

IV. Summary

Natural law finds an expression in the constitutions of modern states to a moderate degree. References to it appear almost exclusively in the context of fundamental human rights and freedoms. The constitution-makers, calling fundamental rights "natural" or "inherent", thus admit that they are not their givers and cannot regulate them freely. Emphasizing the natural-law nature of fundamental rights in the constitution is one of the guarantees that public authorities will respect them. None of the constitutions include natural law into the system of formal sources of law, nor specify its vertical relation to positive law. None of the constitution-makers refer to a specific concept of natural law, not wanting to engage in philosophical and legal disputes and thus to weaken the social legitimacy of the constitution. The constitutional references to natural law are "minimalistic" in content. By merely defining all fundamental rights or individual rights as "natural", the constitution authors avoid the controversy surrounding the category of *ius naturale*. In the Polish Constitution, this "caution" and "restraint" has gone too far. The form of indirect reference to natural law in Art. 30 is the result of a political compromise. It is not without any reason that Jerzy Jaskiernia forecasts that if the Constitution were currently passed, there would be a "proper" or "fuller exposure of the role of natural law" in its text[62].

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[60] I. Iban, *God…*, p. 39. The author describes natural law as the "theist notion".

[61] *North Western Health Board v. HW and CW* [2001] IR 622, pt. 208.

[62] J. Jaskiernia, *Spór…*, p. 120.

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