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Polish Constitutional Order: Between Consolidation and Crisis

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Słowa kluczowe: konstytucja, tożsamość konstytucyjna, transformacja, kryzys konstytucyjny, europeizacja konstytucji

Abstract

The article concerns the dilemmas of building Polish constitutional identity after 1989. The hypothesis assumes that after the initial twenty years of consolidation and Europeanization of constitutional democracy, there was an attempt at undermining the adopted political order. The policy of the ruling camp after 2015 is a striking proof of this crisis.

Streszczenie

Polski porządek konstytucyjny: między konsolidacją a kryzysem

Artykuł dotyczy dylematów budowy polskiej tożsamości konstytucyjnej po 1989 roku. Hipoteza zakłada, że po początkowym, ponad dwudziestoletnim procesie konsolidacji i europeizacji demokracji konstytucyjnej, nastąpiła próba podważenia przyjętego porządku ustrojowego. Znamiennym dowodem tego kryzysu, jest polityka obozu rządzącego po 2015 r.

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I. Introductory Remarks

The process of building Polish constitutional identity has been underway for over thirty years, i.e. the establishment of such a systemic order that would reconcile the necessary elements of Polish political and constitutional tradition with borrowings from other, foreign constitutional regimes necessary to build a democratic state ruled by law. This article adopts the hypothesis that the consolidation of constitutional democracy was taking place during the first quarter of a century of systemic changes, and the main emphasis was placed on building democratic political institutions. In 2015, symptoms of a serious crisis appeared: a political camp that denied the existing order and proposed significant changes to it, including an amendment to the constitution, came to power. These processes were accompanied by a specific motto: the hitherto elites focused on building certain theoretical institutions, but forgot about the needs of an ordinary citizen; there was an alienation of power. "The adopted model of liberalism meant that more and more communities stopped benefiting from economic development"[2]. Several research questions should be answered: What values and principles built the identity of the Constitution of 1997? What is the process of Europeanization of the constitution? What are the most important symptoms of the crisis of constitutional democracy in Polish conditions?

The process of reaching the full basic law had several important stages. A direct constitutional consequence of the Round Table was the amendment to the Basic Law of April 7, 1989 (the so-called April amendment). It was largely a transfer to the legal and systemic framework of the round-table agreement, with particular emphasis on the regulations concerning the system of supreme state organs and the system of government. He emphasized the imperative and arbitrary role of the head of state, with the simultaneous strong position of the Sejm and the government operating on the basis of the trust of both the Sejm and the president[3].

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[2] D. Kowalska, *Czas dobrej zmiany. Jak rodzi się rewolucja*, Warsaw 2018, p. 200.

[3] T. Mołdawa, *Parlament w systemie władz naczelnych Rzeczypospolitej*, [in:] *Polski system polityczny w okresie transformacji*, eds. R. Chruściak, T. Mołdawa, K.A. Wojtaszczyk, E. Zie-

The next amendment to the constitution (December 29, 1989) should be considered a breakthrough, as it changed the essence of the foundations on which the political system of the Polish state rested after 1952. The December change of the constitution had two "layers" – symbollic and related to the basic (constitutional) principles of the system. The symbolic layer is revealed in the form of a return to the traditional name of the Polish state (the Republic of Poland instead of the People's Republic of Poland), changes in the image of the state emblem and in the deletion of the constitutional preamble, characterized by the interpretation of the ideological foundations of the socialist state. The Republic of Poland became a democratic state ruled by law. Instead of the "working people of towns and villages", the nation understood as a group of all citizens of the Republic of Poland was recognized as the primary, supreme entity of state power. The amendment to the constitution referred in the fullest and comprehensive sense to the principle of political pluralism.

The amendment to the constitution, adopted on September 27, 1990, concerning the institution of the President of the Republic of Poland was of significant importance for the correction of the system of government. The September amendment changed, first of all, the manner of electing the president, i.e. the election by the parliament (National Assembly) was abandoned and the model of general and direct elections was adopted. General elections, giving the legitimacy of the sovereign, strengthened the constitutional functions of the head of state, including, in particular, the function of constitutional and political arbitration. This became an important argument in the president's disputes, first of all, with the parliament – both the Sejm and Senate, as well as the president, derived their mandate directly from the citizens[4]. Thus, the president ceased to be a kind of "political hostage" of parliamentary groups.

The systemic solution adopted in 1992 had an exceptional, marked by tradition significance. Here, another (after the adopted in 1919 and 1947), the so-called Small Constitution appeared in the Polish constitutional order. It should be understood as a transitional and incomplete constitutional act regulating only the most important spheres of state activity (mainly those concerning the status, functions and powers of supreme state organs), until the

liński, Warsaw 1995, p. 211.

[4] D. Górecki, *Ewolucja przepisów dotyczących trybu wyboru prezydenta w polskim prawie konstytucyjnym*, "Przegląd Sejmowy" 1996, No. 2, p. 9.

full and "final" constitution is adopted. The Small Constitution, i.e. the constitutional law on mutual relations between the legislative and executive power of the Republic of Poland and on local self-government of October 17, 1992, became an element of a specific constitutional canon, and the period between 1992 and 1997 can be called as the period of the composite constitution's validity. This canon consisted of three main segments: 1) the Small Constitution itself of October 1992; 2) the provisions of the July Constitution of 1952, upheld by the Small Constitution, regulating, inter alia, issues of the main principles of the system, the catalog of human and civil rights and freedoms, judicial authorities, and other legal protection bodies; 3) the constitutional act on the procedure for the preparation and adoption of the Constitution of the Republic of Poland of April 23, 1992. From the point of view of the systemic practice, the period of the Small Constitution was marked by the phenomenon of law phasing (org. *falandyzacja prawa*)[5] – the interpretation of provisions and the "management" of legal gaps in order to extend the scope of powers of state organs. During the period in question, this mainly concerned the institution of the president.

II. The Specificity of the Manner of Adopting the Constitution

Work on the Constitution of the Republic of Poland can be divided into three basic stages, distinguished on the basis of parliamentary terms: 1) the period of the Sejm of the 10th (contractual) term 1989–1991 (preparation of draft constitution by two constitutional committees – the Sejm and the Senate); 2) the period of the Sejm of the 1st term 1991–1993 (works based on the constitutional act described below; submission of seven draft constitutional projects and preliminary debate on them); 3) the period of the Sejm of the second term of office 1993–1997 (final preparation and adoption of the Constitution of the Republic of Poland). Thus, the process of preparing and adopting the constitution lasted a very long time, compared to other Central and Eastern European countries, but it was justified by the lack of a developed political compromise, a political breakdown of the parliament,

[5] From the name of prof. Lech Falandysz, president's lawyer L. Wałęsa.

and the dissolution of the contract and the first term Sejm, before the end of the constitutional four-year term[6].

In the second and third period of work on the constitutional law, their legal basis was the constitutional law on the procedure for the preparation and adoption of the Constitution of the Republic of Poland of 23 April 1992. The model for adopting the constitution was based on the assumption that both chambers of parliament – merging in the National Assembly – equally participate in the process of preparing the draft and adopting the constitution, but the condition for the entry into force of the constitution is that it is approved by the sovereign by popular vote. Thus, it was the only case of a mandatory nationwide referendum in Poland so far.

Pursuant to the constitutional law of April 1992, the Constitutional Committee of the National Assembly (KKZN) was established, consisting of 46 deputies elected by the Sejm and 10 senators elected by the Senate. KKZN meetings were attended by authorized representatives of the President of the Republic of Poland, the Council of Ministers and the Constitutional Tribunal (with the right to submit applications). The right to legislate (or rather – to submit a draft constitution to the National Assembly) was exercised by the following entities: the KKZN itself, a group of 56 members of the National Assembly and the President of the Republic of Poland. After the amendment to the constitutional act made in April 1994, the legislative initiative was also available to a group of citizens who had active voting rights to the Sejm, numbering at least 500,000 people (people's political initiative)[7]. On the basis of the submitted bills, the KKZN developed a uniform draft of the Constitution of the Republic of Poland (adopted by the Committee with a qualified majority of 2/3 votes), which it then presented to the National Assembly. The National Assembly passed the constitution in two or three readings. In the light of the the Art. 8 sec. 2 of the Constitutional Act of 1992, "The National Assembly examines the Constitution in the third reading if the President, within 60

[6] W. Tomaszewski, *Kompromis polityczny w procesie stanowienia Konstytucji Rzeczypospolitej z 2 kwietnia 1997 roku,* Pułtusk 2007; S. Gebethner, *W poszukiwaniu kompromisu konstytucyjnego. Dylematy i kontrowersje w procesie stanowienia nowej Konstytucji RP,* Warsaw 1998.

[7] In the light of the current constitutional regulations, citizens do not have the right to this type of initiative.

days of sending the Constitution, proposes amendments to the Constitution". If the president proposed amendments, the National Assembly first voted on the proposal (by an absolute majority of votes), and then passed the constitution by a 2/3 majority. After the constitution was passed, the president called a referendum approving the constitution. The constitution was considered adopted if the majority of citizens voting in favor of it. The law did not define a minimum turnout for the binding nature of the popular vote. The president signed the constitution adopted in the referendum and ordered its immediate adoption in the Journal of Laws of the Republic of Poland.

In the parliamentary term which was crucial for the constitutional work (1993–1997), the Constitutional Commission of the National Assembly was constituted in October 1993. Its work was based on seven draft constitution: submitted by the President of the Republic of Poland, prepared by NSZZ "Solidarity" and submitted in 1994. Under the popular initiative, the Sejm of the 1st term[8] and four party bills (submitted by a group of at least 56 members of the National Assembly). In September 1994, the first reading of the draft constitution took place in the National Assembly. In March 1997, the Constitution of the Republic of Poland was adopted in the second reading. This was made possible thanks to the formation of a coalition that aimed – in the face of the end of the parliamentary term – at the rapid adoption of the constitution. The constitutional coalition was composed of the Democratic Left Alliance, the Freedom Union, the Polish People's Party and the Labor Union. At the opposite extreme, the largest right-wing groups of the time – Solidarity Election Action and the Movement for Reconstruction of Poland – were in the anti-constitutional coalition. The antagonism between the two coalitions manifested itself in particular during the subsequent campaign before the constitutional referendum[9].

As a result of President A. Kwasniewski's proposal for amendments, on April 2, 1997, the National Assembly passed the constitution in the third read-

[8] In the light of the amendment to the constitutional act introduced in 1994, the KKZN could also consider bills submitted in previous terms of the Sejm and Senate. 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; J. Marszałek-Kawa, A. Ratke-Majewska, P. Wawrzyński, *The Politics of Memory in Post-Authoritarian Transitions, vol 2, Comaprative Analysis*, Newcastle 2017.

[9] S. Gebethner, *Referendum konstytucyjne – uwikłania społeczne i prawno-ustrojowe*, [in:] *Referendum konstytucyjne w Polsce*, ed. M.T. Staszewski, Warsaw 1997.

ing. The approval referendum ordered by the President of the Republic of Poland was held on May 25, 1997. Only 42.8% of those entitled to vote (12 137 136) took part in it. 52.7% of voters supported the adoption of the constitution, 45.8% were against. In the light of these results, the nation approved the new constitution passed by the parliament. The special legitimizing role of this popular vote should be emphasized, considering the sharp political conflict accompanying the adoption of the constitution and the fact that the parliament (especially in the Sejm) in 1993–1997 lacked the majority of right-wing parties running in the 1993 elections. The Polish Constitution entered into force three months after its promulgation, i.e. on October 17, 1997.

III. Why a Broad and Deep Constitution?

The Constitution of 1997 is one of the acts of considerable width and depth. It regulates – firstly – all the most important areas of state life, and thus constitutes the opposite field for the minimum constitution, defining only the fundamental principles of the political, socio-economic system, the most important issues concerning the organization of the highest state authorities and outlining the catalog of human and civil rights and freedoms[10]. *The width* of the Polish Constitution is illustrated by the sheer number of thirteen chapters, preceded by an extensive preamble. Another feature of the constitutional act is its *depth* – it consists of 243 articles, the provisions of which in most cases are extremely detailed[11]. This is due to three main reasons. First of all – this type of "retail" regulations is weighed down by the mentioned phasingization of the law: provisions devoid of general character are more difficult to subject to interpretation procedures. Secondly, the process of reaching a compromise between the political forces adopting the constitution played an important role here. Thirdly, a certain explanation of the detailed nature of the provisions of the constitution is provided in the the Art. 8 sec. 2 of the Funda-

[10] Such acts, in my opinion, include the constitution of Norway of 1814 and the constitution of Latvia of 1922.

[11] In this field, the chapter devoted to the rights, freedoms and obligations of man and citizen stands out, including, for example, Art. 53, Art. 55 (after the amendment of 2006), Art. 61, Art. 68, Art. 70.

mental Law itself, which states: "The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise". It is recognized that the direct application of the constitution consists in adopting a constitutional norm as the sole basis or elements of the legal basis for issuing a legal act (without the need to refer to an act that would develop and specify the provisions of the constitution)[12]. In order for such actions to be possible, it seems necessary to achieve at least a minimum detail of constitutional provisions. It is worth paying attention to the importance of this provision in the circumstances of the crisis of the institution of the Constitutional Tribunal after 2015.

IV. Principal Values and Principles

An important element in terms of identity is the preamble – an inarticulate, ceremonial introduction, referring to Polish history and state traditions. The preamble also mentions the Constitution of the Republic of Poland as fundamental rights for the state, based on "respect for freedom and justice, cooperation between authorities, social dialogue and the principle of subsidiarity strengthening the rights of citizens and their communities". The constitutional introduction also defines the current Polish state as the Third Republic, for the benefit of which the constitution is applied[13].

In the literature on the subject, there is a strong position that the constitutional preamble is not only a solemn ornament, but a legally and politically binding component of the constitution, primarily as an interpretative determinant of its content, but also as a guide for shaping the political and moral basis of the legal order in Poland. From this point of view, the words of the judge of the Constitutional Tribunal, B. Zdziennicki, are significant: "A few years ago, in a dissenting opinion to the well-known judgment of the Constitutional Tribunal of 11 May 2007 (…), I expressed the view that the finding that the preamble to the act (it was the Lustration Act under examination as

[12] K. Działocha, *Bezpośrednie stosowanie Konstytucji RP (stan doktryny prawa),* [in:] *Bezpośrednie stosowanie Konstytucji Rzeczypospolitej Polskiej,* ed. K. Działocha, Warsaw 2005, pp. 15, 17.

[13] Attempts at introducing the concept of the Fourth Republic of Poland in 2005–2007 could therefore only be of a political nature, not reflected in the Basic Law itself.

to its constitutionality) is inconsistent with the preamble to the Constitution allows, for this reason alone, to declare the entire act inconsistent with the Constitution"[14]. Significant conclusions can also be drawn from the jurisprudence of the Constitutional Tribunal itself, which, for example in the judgment No. K 18/04, stated: "Legal norms in the strict sense cannot be derived from the text of the preamble to the Constitution. Nevertheless, it provides indications, based on an authentic statement by the legislator, as to the directions of interpretation of the provisions of the normative part of the Constitution consistent with his intentions"[15].

When analyzing the contents of the Constitution of the Republic of Poland, it can be concluded that it is a specific synthesis of Polish political traditions and the fundamental principles of modern, democratic constitutionalism. These include: the principle of a democratic state ruled by law, the principle of political pluralism, the principle of the sovereignty of the nation (people), the principle of representation or the principle of separation of powers. All democratic European constitutions are characterized by their due legitimacy. By this it should be understood that the fundamental laws have been adopted according with democratic procedures – with particular regard to the principle of political representation – often crowned with the direct participation of citizens by popular vote[16]. The "European spirit" of the Polish constitution can also be seen in the extensive catalog of human and civil rights and freedoms, together with the instruments of effective safeguards against their violation by the state authorities.

V. Europeanization as a Feature of Polish Constitutional Identity?

It is difficult to consider the dilemma of the contemporary constitutional order without reference to the process of political Europeanization. After Poland

[14] B. Zdziennicki, *Wprowadzenie,* [in:] *Preambuła Konstytucji Rzeczypospolitej Polskiej,* "Studia i Materiały Trybunału Konstytucyjnego", t. XXXII, Warsaw 2009, p. 8.

[15] *Konstytucja III RP w tezach orzeczniczych Trybunału Konstytucyjnego i wybranych sądów,* ed. M. Zubik, Warsaw 2008, p. 2.

[16] T. Mołdawa, *Konstytucja RP a standardy współczesnego konstytucjonalizmu,* [in:] *Konstytucja RP. Oczekiwania i nadzieje,* eds. T. Bodio, W. Jakubowski, Warsaw 1997, p. 29.

joined the European Union in 2004, the Treaty of Accession and the Treaty of Lisbon constitute the treaty foundations of what can be called "constitutionalism outside the state"[17]. Together with the constitution of the nation-state being a member of the European Union, they form a broadly understood constitutional canon. It causes that the process of European integration can no longer be limited to national regulations; "Regulations with constitutional features have visibly expanded and dispersed, and the traditional nation-state ceased to have the exclusive prerogative to establish them"[18]. The relations between the sources of national law and Community law can be complex, however, especially when it comes to the relationship between the fundamental laws of the Member States and Community law. The binding principle of the primacy of Community law over national law "does not consist in the derogatory effect of this law in relation to national law, but in the obligation of the national legislator to take actions aimed at ensuring the effectiveness of Community law (including an appropriate amendment of national law, including the ConstitutionIn these relations, one can also resort to a "pro-European interpretation" of the constitution. J. Barcz, however, sees a risk of exposing himself to the accusation of "interpreting contra legem – violating the constitution (…), and even a further allegation of tolerating the process of depriving the constitution of its content"[19]. *The European constitutional canon* is therefore a space based on common, fundamental values, but at the same time exposed to collisions between the constitutions of the Member States and Community (EU) law. The Constitutional Tribunal had to face this problem already at the threshold of Poland's membership in the European Union. In 2004, three applications by groups of deputies were submitted to the Constitutional Tribunal to examine the compliance of the Accession Treaty with the Polish Constitution[20]. The Tribunal ruled on the conformity of the Treaty with the Constitution on May 11, 2005, while the statement of reasons for this judgment became a specific interpretation of the role and place in the le-

[17] J. Szymanek, *Europeizacja ustroju politycznego Rzeczypospolitej Polskiej,* [in:] *Strategie rozwoju Unii Europejskiej*, eds. J. Adamowski, K.A. Wojtaszczyk, Warsaw 2010, p. 92.

[18] Ibidem, p. 93.

[19] Ibidem.

[20] R. Chruściak (ed.), *Konstytucyjno-ustrojowe i prawne aspekty przystąpienia Polski do Unii Europejskiej. Dokumenty i materiały (2003–2005)*, Warsaw 2005, p. 18.

gal and systemic system of the Constitution under the conditions of the Polish state's membership in the EU. It is worth paying attention to several key conclusions of the Constitutional Tribunal concerning this issue. First, attention was paid to the issue of the sovereignty of the Republic of Poland. The Constitution does not create grounds for delegating to an international organization or an international body the authorization to make decisions that would be contrary to the Polish constitution, in particular it concerns the conferral of competences "to the extent that would prevent the Republic of Poland from functioning as a sovereign and democratic state"[21]. The supremacy of the constitution, which is an inseparable attribute of state sovereignty, manifests itself on several levels. Primo – the very process of "European integration related to the conferral of competences in some matters to Community (EU) organs is based on the Constitution of the Republic of Poland itself"[22], Therefore, it was not imposed by the force of an "external" constitutional act. Second, the supreme nature of the constitution is confirmed in the mechanism of constitutional review of the Accession Treaty (and, in the future, of any other EU treaty). "This mechanism was based on the same principles on which the Constitutional Tribunal may adjudicate on the constitutionality of ratified international agreements"[23]. Third – the Constitutional Tribunal refers to the situation of "irremovable contradictions" between Community (EU) acts and the Polish Constitution. Such collisions cannot, in the opinion of the Tribunal, result in the loss of force or lead to an automatic change of constitutional provisions. The Constitution is an expression of the sovereign will of the nation and only the "sovereign Polish constitutional legislator" has the right to decide on how to resolve these contradictions[24]. At the same time, in the mentioned justification, three possible methods of action by the legislator in case of the emergence of "irremovable contradictions" were outlined. Therefore, it may be a decision to withdraw Poland from the European Union, a change in Community regulations or a decision to amend

[21] *Wybrane orzeczenia Trybunału Konstytucyjnego związane z prawem Unii Europejskiej,* "Studia i Materiały Trybunału Konstytucyjnego" 2006, vol. XXIII, p. 203.

[22] Ibidem, p. 206.

[23] Ibidem, p. 207.

[24] Ibidem.

the Constitution of the Republic of Poland[25]. The last scenario of actions is obviously the most probable, which is confirmed by the systemic practice. It is worth mentioning here the amendment to the Constitution of 2006 (Art. 55, the issue of the extradition of a Polish citizen) and European amendment to the constitution, resulting from the political initiative of President B. Komorowski, submitted in 2010[26].

Therefore, it should be assumed that, in Polish conditions, the central act of the European constitutional canon, which for understandable reasons "responds" to impulses flowing from the Community (EU) legal order, is the Constitution of the Republic of Poland. The following articles of the constitution play a special role, taking into account the basis of the Polish state's membership in the EU: 8 ("the Constitution is the highest law of the Republic of Poland"), 9 ("the Republic of Poland complies with international law binding it"), 55 (extradition of a Polish citizen), 87 (catalog of sources of universally binding law), 89 (ratification of international agreements), 90 (international agreements entailing the transfer of the powers of state authorities to an international organization or international body in some matters), 91 (place of ratified international agreements in the domestic legal order), 95 (system functions of the Sejm and Senate), 126 (system functions of the President of the Republic of Poland), 133 (powers of the president in the field of foreign policy), 146 (system functions and tasks of the Council of Ministers, including foreign policy). However, there is also a position in the literature that specifically negates the fusion of the national and EU systemic order. According to K. Complak: "(…) despite some similarities between the EU and constitutional values and principles, there is still a long way to go to their agreement or consolidation. Their unification will not take place or should not take place, if only due to the assumed goal and nature of the EU"[27].

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[25] Ibidem, p. 206. E. Piontek, *Konstytucje państw członkowskich w porządku prawnym Unii Europejskiej,* [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej,* eds. J. Wawrzyniak, M. Laskowska, Warsaw 2009.

[26] T. Słomka, *Europeizacja ustroju Rzeczypospolitej Polskiej w świetle prezydenckiego projektu zmiany konstytucji z 2010 r.,* [in:] *Polska i Europa w perspektywie politologicznej,* eds. J. Wojnicki, J. Miecznikowska, Ł. Zamęcki, Warsaw 2020.

[27] K. Complak, *Wartości i zasady konstytucyjne: polskie czy europejskie?,* [in:] *Demokracja konstytucyjna w Polsce,* ed. T. Słomka, Warsaw 2019, p. 63.

VI. Key Symptoms of the Systemic Crisis

The initial symptom is an attempt made by the authorities to undermine the achievements of democratic changes in Poland. Peaceful, evolutionary transformation is defined as a period of errors and threats. According to Z. Machelski, "The state was "soft" for the strong at home and abroad, and at the same time "hard" for the weak, including all its own citizens. Basically, it did not work, but there always was some team of state politicians, located in specific segments of the system"[28]. Therefore, the state should increase its presence in social life and the effectiveness of its institutions, e.g. at the expense of the freedom of operation of non-governmental organizations. At the same time, the myth of the "lost transformation" is born, and hence, the systemic institutions formed in that period are considered inappropriate (e.g. the National Council of the Judiciary, not having – in the opinion of the authorities – sufficient democratic legitimacy, the Commissioner for Civil Rights Protection).

Striving for change the role of the state very often has the character of "circumventing the constitution" ("entrenching the constitution"). From a formal point of view, the constitution is not amended – theoretically, its provisions remain permanent and literally unchanged. Such a change in the two consecutive terms of parliament after 2015 is not possible due to the fact that the ruling camp has too little parliamentary seats. What is changing, however, is what could be called a real constitution. Laws, regulations and even parliamentary regulations reinterpret the political order, and in the absence of sufficient restrictions (e.g. change of the position and role of the Constitutional Tribunal), they can be effectively implemented. "This construction assumes using the law for a purpose contrary to the assumptions of the legal system"[29]. Therefore, it seems appropriate to adopt the position that bypassing the constitution is tantamount to breaking (violating) the constitution[30]. In the analyzed case, the circumvention is not a coincidence that may occur in legislative work and may also be effectively eliminated by the actions

[28] Z. Machelski, *Kilka uwag dotyczących demokratyzacji, podmiotowości państwa oraz rozliczalności w programie i działalności centroprawicy polskiej (przed i po wyborach w 2015 r.)*, [in:] *Państwo w czasach zmiany*, eds. M. Pietraś, I. Hofman, S. Michałowski, Lublin 2018, p. 122.

[29] W. Brzozowski, *Obejście konstytucji*, "Państwo i Prawo" 2014, No. 9, p. 3.

[30] Ibidem, p. 15.

of a third authority, but it is an element of deliberate, systemic change of the constitutional order in a situation in which the ruling majority does not have the number of parliamentary seats necessary for the formal amendment of the Fundamental Law.

VII. Conclusions

Until 2015, the development of the Polish constitutional order was clearly grounded in building an order based on democratic and legalistic values. A strong element creating constitutional identity was the process of Europeanization of the constitutional law. The consequences of the 2015 elections, however, point to a more complex nature of the established political order. The political effort undertaken since the 1990s, including numerous evidence of a systemic agreement, has not found sufficient support in political practice. Constitutional democracy has gained a foundation appropriate to its essence and needs, in the form of the Constitution of the Republic of Poland of 1997. As Jerzy Kuciński points out, "the Constitution of the Republic of Poland of 1997, strongly grounded in the progressive and democratic traditions of earlier Polish constitutions, remains fully compliant with the standards of modern constitutions of democratic European countries, and thus fully fits into the group of these constitutions as one of them, modern, oriented on guaranteeing the status of an individual and efficient functioning of the entire state mechanism"[31]. In practice, however, its institutions turned out to be not fully resistant to actions aimed at undermining constitutional democracy. It results both from the shortcomings of some elements of the systemic transformation process and the deficit of an in-depth constitutional discourse.

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