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CHICAGO: G. Maroń, *The Constitutional Category of “Beauty” in the Polish Legal Order*, „Przegląd Prawa Konstytucyjnego” 2023, no. 2, s. 259–270, <https://doi.org/10.15804/ppk.2023.01.19>

APA: Maroń, G. (2023), *Autonomia związków wyznaniowych jako zasada ustrojowa i prawo podmiotowe*, „Przegląd Prawa Konstytucyjnego” no. 2, s. 259–270, <https://doi.org/10.15804/ppk.2023.01.19>

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The Constitutional Category of “Beauty” in the Polish Legal Order

Keywords: beauty, the Constitution of the Republic of Poland, preamble, axiology, legal order

Słowa kluczowe: piękno, Konstytucja RP, preambuła, aksjologia, porządek prawny

Abstract

The subject of the article is a reference to beauty in the preamble to the Constitution of the Republic of Poland of 1997. First, the legislative history of the fragment of the introduction to the Constitution, which constitutes beauty as a universal value, has been presented. Then it has been interpreted, taking the position that the constitutional concept of beauty is not only an aesthetic category but also an ethical category. Finally, a study of jurisprudence and normative acts has allowed to define the scope of beauty operationalization as a constitutional value. Critical reference has been made to the state of affairs in which beauty, being an element of constitutional axiology, plays a barely noticeable role in the practice of creating and applying Polish law.

Streszczenie**Konstytucyjna kategoria „piękna” w polskim porządku prawnym**

Przedmiotem artykułu jest odniesienie do piękna w preambule Konstytucji RP z 1997 r. W pierwszej kolejności przedstawiono historię legislacyjną fragmentu wstępu ustawy zasadniczej stanowiącym o pięknie jako uniwersalnej wartości. Następnie dokonano jego interpretacji, zajmując stanowisko, że konstytucyjne pojęcie piękna jest nie tylko kategorią estetyczną, ale również i etyczną. W końcu, studium orzecznictwa oraz aktów normatywnych pozwoliło określić zakres operacjonalizacji piękna jako wartości konstytucyjnej. Krytycznie odniesiono się do stanu rzeczy, w którym piękno będące elementem konstytucyjnej aksjologii odgrywa ledwie zauważalną rolę w praktyce tworzenia i stosowania prawa polskiego.

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I. Introduction

The issue of beauty has been attracting the interest of representatives of the Polish legal doctrine for some time, mainly representatives of general and historical legal sciences, and to a lesser extent legal dogmatists. The former focus their attention on – but not only¹ – the aesthetics of law² as one of the areas of the philosophy of law³. The latter compare beauty with individual legal institutions or entire branches or areas of law⁴. Contrary to the discussion on the “beauty of law”, this article has as its object a direct reference to beauty as a universal value in the preamble to the Basic Law. So far, the reference to beauty

¹ See M. Lizisowa, *Funkcjonalne piękno języka prawnego*, “Studia Iuridica” 2020, vol. 83, pp. 114–134; T. Barszcz, *O pięknie w pracy prawnika*, “Archiwum Filozofii Prawa i Filozofii Społecznej” 2020, no. 4, pp. 17–28; M. Jaskólski, *Kilka refleksji nad problemem piękna i prawdy w ideach politycznych*, [in:] *Doktryny – Historia – Władza*, ed. A. Citkowska-Kimla, M. Kiwior-Filo, B. Szlachta, Kraków 2009, pp. 111–119.

² K. Zaidler, *Estetyka prawa*, Warszawa-Gdańsk 2018.

³ J. Zajadło, *Estetyka – zapomniany piąty człón filozofii prawa*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2016, iss. 4, pp. 17–30.

⁴ J. Wójcikiewicz, *Piękno przestępstwa: prolegomena do estetyki sądowej*, Kraków 2020.

in the introduction to the Constitution has not been subject to a broader scientific reflection in the Polish legal literature. Usually, lawyers, when discussing the subject of the constitution axiology, only mention beauty.

The article first presents the genesis of including the concept of beauty in the text of the Constitution. Then the title concept has been interpreted, referring to the achievements of philosophical and legal thought. Finally, based on the study of court judgments and normative acts, it has been undertaken to establish whether and to what extent the constitutional category of beauty has been translated into jurisprudence and developed in the law-making process in Poland.

II. The genesis of the reference to beauty in the Constitution of the Republic of Poland

The Introduction to the Constitution of 1997 lists among the four universal values, in addition to truth, justice and good, also beauty, which takes the following verbal form: "We, the Polish Nation, all citizens of the Republic, both those who believe in God as the source of truth, justice, good, and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources"⁵. The current Basic Law in force is the only Polish constitution in which there is a literal reference to the category of beauty.

Pointing to beauty among the foundations of constitutional axiology was not obvious in the course of work on the Constitution. Of the eight draft constitutions submitted at the first reading in September 1994 for deliberation by the National Assembly, five contained a preamble. However, none of them mentioned beauty. The issue of recalling beauty in the preamble to the Constitution appeared only in September 1996. It was then that Tadeusz Mazowiecki presented a draft preamble, which was a redrafted version of the introduction proposal submitted a year and a half earlier by Stefan Wilkanowicz in "Tygodnik Powszechny". Wilkanowicz's version referred to members of the Constitutional Assembly "believing in God, who is the source of truth, good, and beauty or not sharing this faith, but recognizing the need to strive for these

⁵ The *Constitution of the Republic of Poland* of 2 April 1997 (Dz.U. No. 78, item. 483 as amended).

highest values”⁶. In turn, in the final draft by the Constitutional Committee of the National Assembly, this fragment was given the form: “both those who believe in God as the source of truth, justice, good and beauty, as well as those who do not share such faith but respecting those values that they recognize as arising from other sources”. Eventually, the formula “respecting those values that they recognize as arising from other sources” was replaced with the phrase “those universal values”. The phrase “values that they recognize” undermined the universalism of truth, justice, good, and beauty, suggesting that for nonbelievers these categories may not be considered as values⁷.

The proposal to invoke beauty in the text of the Fundamental Law became the subject of disputes and discussions among members of the National Assembly. Senator Kazimierz Działocha proposed to give up the reference to beauty and instead resort to justice. He attributed a subjective character to beauty. In his opinion, it is “ephemeral and individual”, and the sense of beauty is “quite relative, and this is not about relative truths”⁸. Marek Borowski MP, for whom beauty belongs to “religious axiology”, raised a reservation⁹. These objections were not shared by the majority of members of the National Assembly. They emphasized legitimately that beauty is not essentially of a religious character, but it is a universal value¹⁰.

The assessment of the metaaxiological remarks made in the preamble as to the validation of the four mentioned values is ambivalent. On the one hand, it was not unjustifiably raised in the legal doctrine and in the work course of the National Assembly that with the phrase “those who believe in God as the source of truth, justice, good, and beauty”, the legislator chose the undue role of a theologian, defining God or pointing to His attributes¹¹. When taking a stance on the above-mentioned quotation, one should bear

⁶ S. Wilkanowicz, *Moja prywatna preambuła*, “Tygodnik Powszechny” 1995, no. 6, p. 3.

⁷ Similarly: M. Piechowiak, *Aksjologiczne podstawy polskiego prawa* [in:] *Geneza, filozofia i międzynarodowy kontekst prawa polskiego*, eds. T. Guz, J. Głuchowski, M. Pałubska, Warszawa 2013, p. 49.

⁸ After: M. Piechowiak, *Preambuła Konstytucji Rzeczypospolitej Polskiej z 1997 r. Aksjologiczne podstawy prawa*, Warszawa 2020, p. 59.

⁹ *Ibidem*, p. 59.

¹⁰ *Ibidem*, pp. 59–60 (with reference to Senator K. Kozłowski and K. Łybacka MP).

¹¹ J. Szymanek, *Klauzule wyznaniowe w Konstytucji RP*, “Studia z Prawa Wyznaniowego” 2005, no. 8, pp. 16–17.

in mind that, like the entire preamble, the quoted fragment is the result of a certain political and world-view compromise accompanying the editing of *Invocatio Dei* (*nominatio Dei* in the final version). On the other hand, in the spirit of respect for the world-view pluralism of Poles, the legislator rightly recognized God as not the only one, but one of the sources of the values given.

III. Constitutional beauty – an aesthetic or/and ethical category?

The preamble text does not allow for a definite determination of the beauty understanding adopted by the constitution-maker. Beauty by its very nature is not subject to "precise definitions"¹². Since ancient times, it (Greek *kalós* [καλώς], Latin *pulchrum*) has been included in the three basic values, or excellences or valours, along with truth and good. It is noted that this triad of values corresponds to three basic areas of spiritual culture: science, morality, and art, respectively. In this approach, beauty is combined with aesthetics, artistry, sensual cognition, and feelings. This position seems to be the dominant one at the moment. However, in the reflection of ancient Greeks on beauty, "artworks were not brought to the fore, but reality (cosmos) and morality"¹³. It was about the beauty of being and nature and the beauty of conduct. "For the ancients, 'beautiful' were not only people or statues, but also virtues, characters, and laws; they barely distinguished beauty from good and perfection"¹⁴. Beauty in the considerations of such authors as Plato or Aristotle was largely focused on the moral good of human behaviour, and hence they talked about "moral beauty". In Plato's work, beauty belonged to the world of perfect, unchanging, eternal, and objectively existing ideas. Therefore, it was not the result of subjective feelings. Beauty is not "once only this, and the other time different... nor it is beautiful for one and ugly for the other", because it remains "unchanging and eternal in it-

¹² W. Brzozowski, A. Krzywoń, M. Wiącek, *Prawa człowieka*, Warszawa 2018, p. 117.

¹³ P. Jaroszyński, *Piękno*, "Powszechna Encyklopedia Filozofii", <http://www.ptta.pl/pef/pdf/p/piekno.pdf> (5.08.2022).

¹⁴ W. Tatarkiewicz, *O filozofii i sztuce*, Warszawa 1986, p. 161.

self”¹⁵. Aristotle writes that ethical valour consists in “performing morally beautiful acts”¹⁶, and “acting in accordance with the dictates of ethical valour” is “good and beautiful, and to the highest degree”¹⁷. The philosophers of classical Greece “saw the truest beauty in the spiritual and moral beauty of character, in mental beauty of thought”¹⁸.

Including beauty by the constitution maker as a universal value is an expression of the attribution of objectivity and cognition to it. Beauty is therefore more a property of a thing or conduct, and not merely a subjective human reaction (feeling, experience) to that thing (conduct). It would be wrong to interpret it in the way that the legislator expresses universal values only in slogans, as a blank formula, affirming their different, and perhaps contradictory, meanings. The essence of the analysed fragment of the preamble “lies in its consistently pluralistic, not relativistic character”¹⁹. The Supreme Court is right to say that the explicit reference to the existence of “universal” and “pan-human” values in the preamble means that they are “independent of subjective feelings and beliefs”²⁰. In a specific case, the fact that debatable is the assessment whether something is beautiful or corresponds to beauty, as well as the misclassification of something as beautiful or devoid of beauty, does not undermine the universality of beauty in terms of its objectivity. This remark is applicable both to beauty in an aesthetic context and, even more so, to moral beauty.

Listing also good in the preamble next to beauty does not give grounds for the claim that beauty has only an aesthetic dimension, while the other values would presuppose the ethical dimension. The attitude, typical for lawyers of strict delimitation of the legal language concepts (which is related to the directive forbidding homonymous and synonymous interpretation) is inadequate to the interpretation of *par excellence* philosophically marked terms.

¹⁵ Plato, *Symposium*, 210E – 211D.

¹⁶ Aristotle, *Nicomachean Ethics*, 1120a.

¹⁷ *Ibidem*, 1099a.

¹⁸ W. Tatarkiewicz, *Dzieje sześciu pojęć: sztuka, piękno, forma, twórczość, odtwórczość, przeżycie estetyczne*, Warszawa 1975, p. 137.

¹⁹ P. Stachowiak, *Pluralizm czy relatywizm? Preambula Stefana Wilkanowicza*, <https://www.klubtygodnika.pl/pluralizm-czy-relatywizm-preambula-stefana-wilkanowicza> (5.08.2022).

²⁰ The Judgment of the Supreme Court of 18 October 2019, file ref. no. I NSK 60/18, LEX No. 2729320.

In ancient Greek philosophy, beauty was sometimes associated with good, the so-called *kalokagathía* [καλοκαγαθία]. In turn, in contemporary philosophy, it is perceived as a synthesis of truth and good²¹, and possibly its correlation with justice is also indicated²². Moreover, the very separation of aesthetics and ethics must avoid categorisation, since, as Ludwig Wittgenstein put it: "Ethik und Aesthetik sind Eins"²³.

One should agree with the postulate and the thesis that "in constitutional terms" beauty should not be "reduced to aesthetics"²⁴. In philosophy, both ancient and medieval, as well as in the 21st century²⁵, and in colloquial language, beauty is associated not only with aesthetic sensations but also with "high moral value"²⁶. Thus, both the interpretative directive of a specialist language (appropriate for philosophy) and the universal language speak in favour of considering the ethical dimension of beauty in referring to the preamble to the Fundamental Law.

IV. References to beauty in jurisprudence

Apart from the normativity issues of the preamble provisions and the very understanding of normativity, it should be indisputable that the importance of preambles in the legal order is not exhausted in their symbolic layer. Even if it is recognized that the text of the preambles cannot be used as an independent source of reconstruction of the normative basis for the law application decision, its provisions undoubtedly may, and even should, guide the interpretation of the constitution provisions from the articulated part and the lower-ranking legal provisions. The originator of the preamble fragment on beauty, Stefan Wilkanowicz, understood it "not only as a declaration of com-

²¹ P. Jaroszyński, *Piękno* ...

²² *Simone Weil: An Anthology*, ed. S. Miles, New York 2000, p. 73.

²³ L. Wittgenstein, *Tractatus Logico-Philosophicus*, Frankfurt am Main, 1963 (n. 6,421).

²⁴ W. Dzieziak, *Metaaksjologia Konstytucji RP a nonkognitywizm (zarys zagadnień podstawowych)* [in:] *Integracja zewnętrzna i wewnętrzna nauk prawnych*, ed. M. Król, A. Bartczak, M. Zalewska, Part 2, Łódź 2014, p. 205.

²⁵ For example: P. Paris, *The Aesthetics of Ethics: Exemplarism, Beauty, and the Psychology of Morality*, "The Journal of Value Inquiry" 2021.

²⁶ *Piękno*, <https://sjp.pwn.pl/sjp/piekno;2500228.html> (5.08.2022).

mitment to the highest values, but as an aid in the interpretation of law. It is known that not all life situations can be foreseen by law, and that sometimes the conscience of the judge must be entrusted to it, not the letter of the law. But this judge – or the official – should be supported by a declaration of the legislator’s intent, who says what all these laws are to pursue, and what they are to serve”²⁷.

From the formal-legal or theoretical-legal point of view, nothing prevents the courts from considering beauty as a universal constitutional value in the process of operative interpretation of law. In practice, however, cases of courts referring to the category of beauty from the preamble to the Basic Law are very rare.

Beauty is mentioned in the reasons for judgments alongside the other three universal constitutional values, possibly also other values²⁸. The judiciary sees them as the axiological foundations of the state and the legal order. In the opinion of the Supreme Court, these values “constitute the foundation of the Polish legal system”²⁹. The Court of Appeal in Warsaw presents them as “sources and values” of the rule of law³⁰. They play the role of axiological support for individual provisions of the Fundamental Law, and indirectly also for statutory provisions³¹.

Usually, values other than beauty are indicated by the courts as more adequate from the viewpoint of the subject of the decided cases and argumentation intentions. In one of its rulings, the Supreme Administrative Court stated that the objectives of the Anti-Communist Opposition Activists Act were consistent³² with the values expressed in the introduction to the Constitution. Ratio legis of the Act was associated, however, by the court primar-

²⁷ S. Wilkanowicz, *Moja...*

²⁸ The Constitutional Tribunal in its Judgment of 12 July 2016, file ref. no. K 28/15, OTK-A 2016, item 56 lists beauty alongside truth, solidarity, justice, love and kindness. It does not refer to them as constitutional values, but as “values adopted by the society as a whole” (point II.6).

²⁹ The Judgment of the Supreme Court of 18 October 2019, file ref. no. I NSK 60/18.

³⁰ The Judgment of the Court of Appeal in Warsaw of 23 March 2018, file ref. no. I ACa 2078/16, LEX No. 2516029.

³¹ The Judgment of the Supreme Court of 18 October 2019, file ref. no. I NSK 60/18.

³² The Act of 20 March 2015 on *Activists of the Anti-Communist Opposition and Persons Repressed for Political Reasons*, the consolidated text in Dz.U. 2021, item 1255.

ily with the dignity of a human being, truth, freedom, honesty and patriotism, and not with beauty³³.

The references to beauty in the reasons for judgments do not constitute a classic argument in the understanding of logic, but they fit more into the broader context of an argumentative statement. An exception is the judgment of the Provincial Administrative Court in Łódź, where the constitution maker's reference to the universal values of justice, good and beauty was presented as an argument in favour of such an understanding of the principle of sustainable development, in which it has "a universal, not an individual dimension"³⁴. The category of beauty – however, without reference to the preamble to the Basic Law – was reached by the Provincial Administrative Court in Olsztyn, interpreting the concept of "artistic performance" within the meaning of the Copyright Act³⁵.

It happens that courts directly contest the importance of universal values included in the preamble to the Constitution for the interpretation of statutory provisions. The Provincial Administrative Court in Kraków in one of the cases ruled that the commune cannot refer to the 'deep analysis' of the principles contained in the preamble to the Constitution of the Republic of Poland, such as, *inter alia*, truth, justice, good and beauty" in order to avoid the statutory obligation to include in the homeless animal care program such issues as sterilization or castration of animals in shelters and putting to sleep blind litters³⁶.

The judicial interpretation of the fragment of the preamble which constitutes the value of beauty sometimes raises reservations as to its correctness. For example, in the opinion of the Constitutional Tribunal, "the introduction to the Constitution emphasizes the importance of faith as a source of truth, justice, good and beauty"³⁷. The Court used an unauthorized sim-

³³ The Judgment of the Supreme Administrative Court of 15 December 2021, file ref. no. III OSK 693/21, LEX No. 3304592.

³⁴ The Judgment of the Provincial Administrative Court in Łódź of 6 October 2021, file ref. no. II SA/Łd 377/20, LEX No. 3246965.

³⁵ The Judgment of the Provincial Administrative Court in Olsztyn of 16 February 2017, file ref. no. I SA/Ol 866/16, LEX No. 2229891.

³⁶ The Judgment of the Provincial Administrative Court in Kraków of 3 December 2013, file ref. no. II SA/Kr 852/13, LEX No. 1493112.

³⁷ The Judgment of the Constitutional Tribunal of 10 December 2014, file ref. no. K 52/13, OTK-A 2014, No. 11, item. 118 (point III.5.1).

plification. According to the Constitution legislator, one of the sources of these values is God, and not faith in Him. This seemingly insignificant distinction, however, has actually significant consequences for the understanding of the essence of values. If these values were grounded in religious faith, and not in the object of that faith, this would undermine their objective (transcendent) character.

It also happens that beauty as a universal value standing at the axiological foundations of the legal order is not noticed at all in the jurisprudence. For example, in one of its judgments, the Constitutional Tribunal stated that the preamble states the need to observe “the universal values, such as truth and justice”³⁸, thus forgetting the value of beauty and good.

V. References to beauty in normative acts

Beauty as a constitutional value has found its specification and development in the law-making process to an extremely limited extent. References to it appear *expressis verbis* in a few acts of universally binding law. Among them, distinguishable are regulations defining the core curriculum of pre-school education and general education³⁹. In these acts, beauty is understood inconsistently. In the case of some references to beauty, it is undoubtedly an aesthetic category, e.g. when it comes to sensitizing the student to the beauty of music, awakening the sensitivity to the beauty of nature, reflecting on the beauty of the natural world, perceiving the beauty of the surrounding world, shaping the sense of responsibility for beauty in the places where one lives and feeling proud of the beauty of the native nature, evaluating the landscape in terms of its beauty (subjects: music, art, nature, geography). At other times, it is not clear whether the beauty mentioned in the core curriculum is narrowed down to aesthetics or it also includes moral beauty. For example, it is

³⁸ The Judgment of the Constitutional Tribunal of 11 May 2005, file ref. no. K 18/04 (point III. 8.2).

³⁹ The Regulation of the Minister of National Education of 14 February 2017 (Dz.U. 2017 item 356); the Regulation of the Minister of National Education of 30 January 2018 (Dz.U. 2018 item 467); the Regulation of the Minister of National Education of 9 August 2019 (2019 item 1652).

indicated that the process of upbringing and education is to allow for "gathering experiences on the way leading to truth, good and beauty"; in general, beauty is mentioned among other values that a student is supposed to seek, perceive, understand, internalize, and be guided by them (subjects: history, Polish language). It seems that when speaking of beauty, the legislator also had in mind the property of things and not of human behaviour. This conclusion is supported by the fact that, according to the core curriculum, the discussion on "what is the criterion of beauty?" conducted as part of the philosophy course was directly classified into the area of aesthetics and not ethics. This proposal is not necessarily up to date under other legislation related to education. For example, the classification assessment of a student's behaviour is to consider "care for the beauty of the mother tongue", which includes, for example, avoiding the use of vulgarisms, and therefore undoubtedly it also involves the ethical context⁴⁰.

In reference to beauty at the statutory level, the aesthetic dimension dominates. Beauty, sometimes described as "natural" or "unique", is related to the world of nature (natural heritage⁴¹, landscape⁴², plants and animals⁴³, mountains⁴⁴), less often to objects⁴⁵. It happens that beauty is connected with the sphere of the human intellect, as in one of the ordinances which stipulated that a person who is to work as a mathematics teacher must be ready "to deepen his/her understanding of the meaning and beauty of mathematics"⁴⁶. Bear-

⁴⁰ § 11 section 1 point 4 of the Regulation of the Minister of National Education of 22 February 2019 on the assessment, classification and promotion of students at public schools (Dz.U. 2019 item 373).

⁴¹ Art. 2 of the Convention for the Protection of the World Cultural and Natural Heritage, adopted in Paris on 16 November 1972 (Dz.U. 1976 No. 32 item 190).

⁴² The preamble of the European Landscape Convention, adopted in Florence on 20 October 2000 (Dz.U. 2006 No. 14 item 98).

⁴³ The preamble of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, adopted in Washington on 3 March 1973 (Dz.U. 1991 No. 27 item. 112).

⁴⁴ The preamble of the Framework Convention on the Protection and Sustainable Development of the Carpathians adopted in Kiev on 22 May 2003 (Dz.U. 2007 No. 96, item. 634).

⁴⁵ The Regulation of the Minister of the Environment of 19 May 2005 on the method of valuation and recording of hunting trophies (Dz.U. 2005 No. 96 item. 820).

⁴⁶ The Regulation of the Minister of Science and Higher Education of 25 July 2019 on the standard of education preparing for the teaching profession (the con. text Dz.U. 2021, item 890), Annex 2, see B.3.K1.

ing in mind that the legislator, in most cases, reduces beauty to aesthetics, it is understandable to use the second term in the texts of normative acts.

VI. The conclusion

If we distinguish the legal system (a set of all binding and interrelated legal provisions or legal norms encoded in it), the practice of law application and the achievements of legal science as the constituent parts of the legal order, it turns out that the constitutional category of beauty has little presence in each of these three areas. Examples of invoking beauty as a universal value in reasons for judgments are few. Moreover, beauty is only mentioned in judicial decisions without any direct translation into the decision of the court and its rationalization. Similarly, there is a literal reference to beauty in a few normative acts, in which one could find a development of an introduction to the Fundamental Law. The lack of a broader translation of the preamble fragment expressing the axiological importance of beauty to the legislative and adjudication process may also explain the fact that the title issue remains on the periphery of the legal scholarship interest.

This state of affairs cannot be seen as an argument for the redundancy of including the reference to beauty in the introduction to the Constitution. The constitution maker is not responsible for the manner of operationalization of individual provisions of the Constitution, including omissions in this regard. Beauty understood not only in aesthetic, but also ethical terms should be considered by the legislator and the judiciary. Consideration of the “axiological perspective determined at the fundamental constitutional-legal level, in particular by the wording of the preamble to the Constitution of the Republic of Poland”⁴⁷ is a condition for the correct creation and application of law; correct in the sense of respecting the “constitutional identity” expressed in the preamble, that is, “the image of ourselves as a nation and society” and the ideals that guide us, including beauty⁴⁸.

⁴⁷ The dissenting opinion of Judge J. Wyrembak to the reasons for the Judgment of the Constitutional Tribunal of 22 October 2020, file ref. no. K 1/20, OTK-A 2021, item 1.

⁴⁸ M. Granat, *Ukryte bogactwo preambuły Konstytucji*, “Państwo i Prawo” 2022, No. 3, p. 130.

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