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**On the Language of the Preamble to the Constitution
of the Republic of Poland and its Functions**

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Słowa kluczowe: Preambuła, konstytucja, funkcje języka

Abstract

The object and purpose of this paper is to reflect on the linguistic form of the preamble to the current Constitution of the Republic of Poland. Like all preambles, it has a specific form that is clearly different from ordinary texts formulated in the language of the law, and as a result, its normative character is sometimes questioned in the doctrine. The text of the preamble performs a number of functions: descriptive, expressive, impressionistic, as well as performative (causal), and poetic, and can be analyzed through the lens of each of them. Thus, the analysis of the preamble differs from that of a typical utterance formulated in the language of the law.

Streszczenie**O języku Preambuły do Konstytucji RP i jego funkcjach**

Przedmiotem i celem artykułu jest refleksja nad językową formą preambuły do obowiązującej Konstytucji RP. Jak wszystkie preambuły, ma ona specyficzną formę, która wyraźnie różni się od zwykłych tekstów formułowanych w języku prawa, przez co jej normatywny charakter bywa kwestionowany w doktrynie. Tekst preambuły pełni szereg funkcji: opisową, ekspresyjną, impresyjną, a także performatywną (sprawczą) i poetycką, i może być analizowany przez pryzmat każdej z nich. Analiza preambuły różni się zatem od analizy typowej wypowiedzi sformułowanej w języku prawa.

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The preamble to the 1997 Constitution of the Republic of Poland is not an exceptional text; the constitutions of countries that have undergone political transformations (Belarus, Bulgaria, the Czech Republic, Lithuania, Slovakia, Slovenia, and Hungary)¹ are provided with similar introductions preceding the essential normative part of the constitution divided into numbered articles. All Polish constitutions, except for the constitutional laws of the partition period (the Constitutional Law of the Duchy of Warsaw of 1807 and the Constitutional Law of the Kingdom of Poland of 1815) and the April Constitution of 1935 also had such introductions. The very term “preamble” is not free from controversy: the Polish Constitution does not introduce such an editorial unit, and its opponents show that the word “preamble” evokes certain negative connotations (according to the Warsaw Dictionary of 1904, a preamble is “a long, contentless introduction, idle talk”) and that the neutral term “introduction” seems more appropriate. However, these connotations appear to have disappeared nowadays and the term “preamble” is commonly understood as “an introduction to a legal act, usually of important political significance, explaining the circumstances under which the act was passed and stating the purposes it should serve”².

¹ A. Gwiżdż, *Wstęp do konstytucji – zagadnienia prawne* [in:] *Charakter i struktura norm konstytucji*, ed. J. Trzciński, Warsaw 1997, p. 168.

² M. Piechowiak [in:] *Konstytucja RP*, t. I, *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warsaw 2016, p. 2, 168–169.

Researchers-interpreters of various constitutional introductions note that they often contain references to history and explanations relating to the accepted system of values, which is supposed to be the basis for the entirety of the norms set forth in a specific act, as well as contain expressions of encouragement for consistent observance³. The legal literature formulates the following classification of preambles according to their content: first, substantive preambles, which describe the essence of the normative act and indicate the object of the regulation; second, motivational preambles, which state the reasons for the issuance of the normative act; third, historical preambles, which emphasize the continuity of certain historical processes and sometimes distance themselves from certain past events; and finally, ethical preambles, which refer to the values indicated by the extra-legal normative system⁴.

Although the presence of preambles in legal texts is not surprising to their readers – they are present both in older (the May 3 Constitution and the Constitution of the United States of America) and in modern constitutional laws, as well as in important international acts – their unusual, distinctive linguistic form and specific visual character deserve attention and reflection. A preamble is always a continuous text placed between the title of the normative act and its substantive provisions. Unlike individual provisions, in accordance with the requirements of legislative technique, it is divided into articles, paragraphs, or otherwise distinct editorial units⁵. The preamble to the current Constitution of the Republic of Poland consists of two multiple compound sentences that abound in participles and contain total of one hundred and seventy words; thus, in comparison with other existing constitutions of democratic countries, it is one of the longest introductions. Like most texts of this type, it is an utterance formulated in a language that is clearly different from other legal texts, with a different syntax and style. An “ordinary” or typical legal text primarily performs an impressive function: it induces its addressee to behave in a certain way, influences his or her attitude and view of reality, evokes certain beliefs; sometimes it also performs a performative function –

³ A. Gwiżdż, *op.cit.*, p. 170.

⁴ S. Lewandowski, *Charakter normatywny preambuły*, “*Studia Iuridica*” 1998, vol. 36, pp. 131ff.

⁵ B. Sosnowski, *Geneza, rola i cechy preambuły w aktach prawnych*, “*Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM*” 2016, no. 6, p. 217.

when the message itself has creative power, it creates a new social reality⁶. For a preamble, more functions can be distinguished: in addition to the impressive and performative function, it also performs an expressive, descriptive, and poetic function, so it is reasonable to characterize it through the lens of the function of language it performs.

In relation to the entire text of a legal act, preambles usually perform a descriptive function; for example, they inform about the foundations and origins of the state's system of government and its main principles. The text of the preamble to the Constitution of the Republic of Poland is no exception and refers to specific facts, such as the self-determination regained by Poland in 1989, which are verifiable on the basis of the criterion of truth and falsity; it gives an account of specific actions and informs about the state of affairs that occurred. This function is usually accompanied in the text by an expressive function; its presence in the text of the preamble is most clearly confirmed by the choice of first-person narrative: "we, the Polish Nation" (the choice of such a form emphasizes that the state is a common good of its citizens, of the whole nation), "we establish", and "we call upon", and the presence of words referring to feelings, emotional states, and acts of will: "believing", "grateful", "obligated", "aware", "mindful", "mindful", and "desiring". Roman Jakobson, the author of the canon work on the functions of language, characterizes the expressive function as follows: "this function, centered on the addressee, indicates the direct expression of the speaker's attitude toward what he or she is talking about. This is about giving an impression of a certain emotion (...)"⁷. The emotions of the collective author of the utterance are easy to identify here: he feels, above all, joy and enthusiasm, and is filled with a sense of responsibility resulting from the adoption of the most important document for the state: the Constitution of the Republic. The express pride of the speaking subject is rooted in Poland's past – he refers to "the best traditions of the First and Second Republics".

The preamble, as a place for presenting the values on which the state should be built, where the historical continuity of the state and important

⁶ See: E. Grodziński, *Wypowiedzi performatywne. Z aktualnych zagadnień filozofii języka*, Wrocław 1980; J.L. Austin, *Jak działać słowami* [in:] J.L. Austin, *Mówienie i poznawanie*, Warszawa 1993, pp. 553–554.

⁷ R. Jakobson, *Poetyka w świetle językoznawstwa*, "Pamiętnik Literacki" 1960, no. 51/2, p. 435.

events in its history are indicated, allows one to read the axiology of the Constitution, its worldview basis, and the adopted system of values⁸. The constitutional preambles of modern states contain expressions and phrases that are carriers of fundamental values – universal human and humanistic – and it can be said that preambles have, by their very nature, a certain axiological “orientation or saturation”⁹. Thus, the expressive function of a preamble is coupled with the impressive function: “In the preamble of the 1997 Constitution, we encounter the purest type of persuasion – the inductive persuasion, which assumes that the addressee is an intellectually active individual and that the originator has honest intentions. There is no need to persuade to change the system of government, because this change has already taken place in an evolutionary manner (the Round Table); it is only necessary to persuade all citizens to accept the new Constitution and abide by it”¹⁰.

The suggestive nature of the text of the preamble is evidenced by the presence of terms referring to values such as “truth”, “justice”, “good”, and “beauty”¹¹. The conclusion of the preamble reiterates the most important values for the Third Republic of Poland: human dignity, freedom, and solidarity with others, which reveals the core values of a democratic law-abiding state. The term repeatedly referred to in the preamble and the supreme value is good: “equal in rights and duties for the common good – Poland”, “for the good of the Human Family”, and “the good of the Third Republic”. “In the intention of the constitutional legislator, the goal of the pursuit is [...] not good in it-

⁸ A. Gwiżdż, *op.cit.*, p. 181.

⁹ J. Madliak, *Wartości w preambułach w wybranych konstytucjach państw europejskich*, “Humanum” 2009, no. 3, p. 149.

¹⁰ E. Malinowska, *Style preambuł konstytucyjnych* [in:] *Odmiany stylowe polszczyzny dawniej i dziś*, ed. U. Sokółska, Białystok 2011, p. 144.

¹¹ As B. Banaszak notes, the preamble of the 1997 Constitution of the Republic of Poland contains formulations that link it to natural law. The Constitutional Tribunal emphasizes their role as a link between the Constitution (an act of positive law) and the natural-law order; see: B. Banaszak, *Prawne znaczenie Preambuły do Konstytucji RP z 1997 roku* [in:] *Dookoła Wojtek... Księga pamiątkowa poświęcona doktorowi Arturowi Wojciechowi Preisnerowi*, eds. R. Balicki, M. Jabłoński, Wrocław 2018, https://repozytorium.uni.wroc.pl/Content/89822/PDF/01_B_Banaszak_Prawne_znaczenie_Preambuły_do_Konstytucji_RP_z_1997.pdf (25.03.2023).

self, but good for humanity, the homeland, Poland (the universal good, the common good, the good of the whole humanity, of the Human Family)¹².

One of the markers of the impressive function is the presence of evaluative words: “huge” sacrifices, “bitter” experiences. The implications of their use by the legislator are not inconsiderable: since he negatively assesses the communist period with the words “mindful of the bitter experience of the times when fundamental freedoms and human rights were violated in our homeland”, then “it is incumbent on the legislator both in the course of the implementation and development of constitutional provisions, and in the course of enacting laws that do not directly serve this purpose, to introduce solutions that take into account this assessment of the authors of the legislator creating the system of government”¹³. The passages in the preamble that refer to history may influence the legislator’s utterances regarding the events of 1944–1956, identifying those guilty of crimes and guaranteeing assistance to those who have suffered harm as a result of their struggle for the sovereignty of the Republic¹⁴.

As for the normative nature of the preamble, no clear solution has been presented in the Polish legal science, although it was enacted in the same procedure as the other parts of the Constitution and is subject to the same mode of amendment. The Constitutional Court points at the difficulties in the determination of the status of the preamble: “The problem of the normativity of the preamble of a normative act is not resolved in the doctrine of law. The controversial nature of the issue is due, among other things, to the ambiguous understanding of the concept of ‘normativity’ and the different approaches to this issue of representatives of various legal sciences. There are three positions, however, that can be distinguished with regard to this matter: 1) one that assumes that the preamble has the same normative character as the articles of the normative act that follow it; 2) one that denies the preamble not only normative but also legal character; 3) and finally, the most common one, which claims that the meaning of the preamble has a binding effect on the interpretation of the articles of the normative act”¹⁵. The third position empha-

¹² E. Malinowska, *op.cit.*, p. 148.

¹³ B. Banaszak, *op.cit.*

¹⁴ *Ibidem.*

¹⁵ Decision of Constitutional Court of January 11, 2011, file ref. no. K 36/09, OTK ZU 8/A/2011, item 93.

sizes the suggestive nature of the preamble; on its basis, the preamble sets the course for the interpretation of questionable laws and is of vital importance to the Constitutional Tribunal's analysis of constitutionality¹⁶.

The following excerpt from the preamble that reads “we establish the Constitution of the Republic of Poland as the laws fundamental to the state based on respect for freedom and justice, cooperation between authorities, and social dialogue, and on the principle of subsidiarity strengthening the rights of citizens and their communities” reveals the performative function; this is an act of creation of a new legal reality, an act of an essentially creative nature. The preamble to the Constitution of the Republic of Poland, like all preambles, is characterized by a high style that is associated with an unusual act of making of law of the highest order, which is important for the nation and the state. Constitutional introductions are utterances of a pompous nature that is expressed primarily in the choice of lexis and phraseology. All are filled with vocabulary that evokes positive, patriotic emotions. Some expressions, such as “Homeland”, “Constitution”, “Polish Nation”, “Third Republic”, and “Human Family” are capitalized. Every preamble also has its own key words, which become the verbal symbols of the main ideas presented in the constitutions¹⁷. The preamble to the current Polish Constitution is part of its peculiar canon established, for example, in the Declaration of Human Rights or the Declaration of Independence; one can see that it is a preamble at first glance. Such a specific organization of the text and the focus on its very form allow us to see the operation of the poetic function of language, which is present not only in poetic texts, but also, as Jakobson argues, in a number of non-poetic utterances. While in poetry it plays a primary role, in other texts it is of

¹⁶ In its judgment of December 16, 2009 (file ref. no. Kp 5/08), the Constitutional Tribunal spoke on the normative nature of the introduction to the Constitution. It stressed that the preamble contains the characteristics of Poland's political path, emphasizes the experience associated with the struggle for independence, and points to universal constitutional values and the basic rules organizing the life of the state community, such as the principles of democracy, respect for individual rights, cooperation between authorities, social dialogue, and the principle of subsidiarity strengthening the rights of citizens and their communities. These provisions are sufficient to recognize the normativity of the preamble; D. Górecki, *Preambula do Konstytucji Rzeczypospolitej Polskiej – potrzebna czy zbędna?* [in:] *Aktualne problemy polskiego i litewskiego prawa konstytucyjnego*, ed. D. Górecki, Łódź 2015, pp. 45–46.

¹⁷ E. Malinowska, *op.cit.*, p. 146.

secondary, accessory nature¹⁸. “As texts that in terms of their genre belong to a certain type of normative acts, constitutions have their unique characteristics in terms of language and composition, which includes having introductions that implement certain patterns and models of expression (genre norms) adopted in advance, and at the same time a certain – as linguists would say – linguistic and genre picture of the world, which ‘provides the addressee with the basic key for interpretation’”¹⁹.

The above remarks emphasize the clear difference between the text of a preamble and a typical legal text that meets the requirements of the “Principles of Legislative Technique”, which are as follows: “An act does not include utterances that do not serve to express legal norms, in particular, appeals, demands, recommendations, admonitions, and justifications of the formulated norms”²⁰. The text of the preamble also does not comply with Gustav Radbruch’s indications from his “Introduction to Jurisprudence” written many years before World War II: “He who condescend to the point of convincing of the expediency of his orders gives up obedience, unless the recipient of the order can be convinced of its expediency. Such a legislator reduces an order, valid by its very existence, to the level of a n advice, acting according to its persuasive force. Meanwhile, it should be a characteristic of acts that, although issued for a certain purpose, they require absolute obedience (...) the word “because” should never be heard from the lips of a modern legislator; therefore, legislation should be characterized by “a rigorous asceticism of the means of expression, a stoic miserliness of words, a sober but voluntary poverty of lapidary style that incomparably expresses the sublimity of the categorical imperative and a confident awareness of the power of the state that issues the order”²¹.

Although the linguistic form of the preamble clearly violates Radbruch’s indications as well as the contemporary indications of the “Principles of Leg-

¹⁸ R. Jakobson, *op.cit.*, pp. 439–440.

¹⁹ A.S. Mastalski, *Prawo stanowione wierszem? Segmentacja Preambuły Konstytucji Rzeczypospolitej Polskiej z 1997 r. w świetle definicji wiersza*, “Przeгляд Konstytucyjny” 2020, no. 3, p. 70.

²⁰ M. Stefaniuk, *Preambuła aktu normatywnego w doktrynie oraz w procesie stanowienia i stosowania polskiego prawa w latach 1989–2007*, Lublin 2009, p. 567.

²¹ G. Radbruch, *Wstęp do prawoznawstwa*, Warsaw 1924, pp. 37, 40, quoted after: A. Gwiżdż, *op.cit.*, pp. 182–183.

islative Technique”, nowadays in democratic countries it is more and more common to believe that, regardless of its unique characteristics, the preamble of a constitution has a normative character. This belief is reflected in the Polish science of law and in the jurisprudence of Polish courts. It should be noted that the text of the preamble performs several different semiotic functions: it describes facts, gives an account of the feelings and emotions of the collective subject – the Nation, understood as a political community, influences and shapes the attitude of the addressee, creates a socio-legal reality, and, finally, captures the attention of the addressee with its special linguistic form established by tradition and custom.

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