

THE UNIVERSALISM OF POLITICAL SYSTEM PRINCIPLES ESPOUSED BY EUROPEAN STATES

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A distinctive trend developed in 19th and 20th century Europe, which saw the universalisation of principles of state political systems. This tendency expressed itself in proclaiming in the constitutions of individual states and in the practical application by European democracies of the political principles inspired by the ideas of the Enlightenment. Over a period of over two centuries, the constitutions of many countries developed with a similar catalogue of principles of government, in a similar legal form. These principles express the same ideas and political values and aim at developing an identical model of government structure based on liberal-democratic ideals. It is characteristic that during the last decade of the 20th century there was a sudden increase in this tendency and the spreading of those principles to over twenty countries.

The issue of principles in a modern state organisation and their endorsement in constitutions is taken up by political science and constitutional law, and is extensively discussed by Rett R. Ludwikowski in his work *Prawo konstytucyjne porównawcze* and the authors of *Konstytucjonalizacja zasad i instytucji ustrojowych*¹. In my deliberations I am adopting Ludwikowski's

¹ P. Sarnecki, ed. *Konstytucjonalizacja zasad i instytucji ustrojowych*, Warszawa 1977.

category of principles referring to the origins, legitimisation, organisation and structure of power². This category includes: the principle of the sovereignty of the people, the principle of political representation, the principle of the separation of powers, and the principle of political pluralism. These are the principles on which the main emphasis will be placed in the deliberations that follow and the process of their adaptation by particular European countries in their constitutional solutions observed.

THE PRINCIPLE OF THE SOVEREIGNTY OF THE PEOPLE

The concept of the sovereignty of the people, formulated by the English political thinker Thomas Hobbes (*Lewiathan*, 1651) and developed by the French political writer Jean-Jacques Rousseau (*The Social Contract*, 1762), laid the foundations of the principle of state organisation which is expressed in and forms the basis of all modern constitutions.

Democratic constitutions accept the principle of the sovereignty of the people (nation) in the sense that public authority derives from the nation and resides in the people who are the subjects of that authority. Only the nation has the right to invest appropriate state organs with that authority and power.

The concept of the sovereignty of the people formed the basic premise of democratic organisation and functioning of state authorities of a modern state. The concept of the sovereignty of the people was expressed in the French *Declaration of the Rights of Man and of the Citizen* which proclaimed in article 3 that "The source of all sovereignty resides essentially in the nation. No body or individual may exercise any authority which does not proceed directly from the nation"³. This principle is expressed and expounded in the French constitution of 1791, giving the start to its constitutionalisation. In this constitution we read, under Title Three: On public authority, article 11: "Sovereignty is one, indivisible, inalienable and imprescriptible. It belongs

² R.R. Ludwikowski, *Prawo konstytucyjne porównawcze*, Toruń 2000, p. 176.

³ *Deklaracja Praw Człowieka i Obywatela z 26 sierpnia 1789 roku*, [in:] *Powszechna historia państwa i prawa. Wybór tekstów źródłowych*. Compiled by M.J. Ptak and M. Kinstler, Wrocław 1999, p. 63.

to the Nation (*Nation*); no part of the People (*Peuple*) or individual can attribute to himself the right to its execution"⁴. The French constitution, by expressing the principle of the sovereignty of the nation, breaks away with the Middle Age tradition of a monarchical sovereign ruling by divine right, recognising in the person of the monarch, not the nation, the guardian of state sovereignty⁵.

European constitutionalism, by adopting liberal-democratic ideas and expressing them in the most superior document of the state, indicated the principle of democracy, rule by the people, to be the basic principle of state organisation. The democratic constitutions of France, ever since the French Revolution until the present day constitution of the Fifth Republic, developed along this line. All these fundamental laws repeated the wording of the 1791 constitution and constructed appropriate legislative and systemic mechanisms to provide for the implementation of the principle of the sovereignty of the people. It should be noted that despite many changes of state organisation, France continues to base its form of government on this principle.

Polish constitutionalism, apart from the rare occasions on which public authority was based on other premises, generally accepts the principle of the sovereignty of the people. Poland's constitution of 1791 expressed this principle in article 5: "All sovereignty in human society takes its origin in the will of the people. In order, then, for the integrity of the state, civil liberties and social order to remain forever in equal balance, three authorities should constitute the government of the Polish nation and by will of this law shall constitute it for ever, and they are: the legislative power vested in the assembled Estates, the highest executive power in the king and guardianship, and the judicial power in jurisdictions to this end already established or to be established"⁶. Later, the constitution of 1921, the constitution of 1952 and the constitution of 1997 repeated the formula of the sovereignty of the nation, although they vested them with different meanings.

⁴ *Konstytucja Francuska z 3 września 1791*, [in:] *Powszechna historia...*, p. 66.

⁵ M. Szczaniecki, *Powszechna historia państwa i prawa*. Warszawa 1994, p. 364.

⁶ *Ustawa Rządowa z 3 maja 1791 roku (Government Statute of 3 May 1791)*, [in:] *Konstytucje w Polsce 1791–1990. Przemiiany*, Warszawa 1990, p. 14.

The principle of the sovereignty of the people was, during the period of the birth of the liberal-democratic systems of European states, the antithesis of the doctrine of absolute monarchy in which sovereignty concentrated in the person of the ruler. The assumption of the theory of the sovereignty of the people was a violation of the foundation of monarchical right to power. Constitutions granted by the king – as in the case of the French Constitutional Charter of 1814, or the Prussian or Austrian constitutions – avoided undermining the superior position of the monarchs by simply not taking up the idea of the sovereignty of the people.

In English political doctrine and practice, a particular principle of the sovereignty of the crown jointly with the sovereignty of the people was developed, in that the monarch retains certain prerogatives and the parliament is free to resolve legislative matters. On this basis, the idea of the sovereignty of the parliament was formed, its fervent supporter being the leading 19th century English constitutionalist Albert Venn Dicey, who expressed it in his chief work *Introduction to the Study of the Law of the Constitution* in 1885⁷.

The 1871 constitution of the German Reich, granted by the king of Prussia in association of other monarchs of the German princedoms, did not yet incorporate the concept of the sovereignty of the people, although it established the institution of representation. It adopted, however, the ideas of political philosophy proclaiming that power is vested by the monarch. The 1919 constitution of the German Reich, also known as the Weimar constitution, adopts the republican principle of the sovereignty of the people, stating in article 1: “The German Reich is a republic. The power of the state proceeds from the people”⁸.

The constitutions of national states established after the First World War universally adopted the principle of the sovereignty of the people. An example of a broader treatment of this concept is its expression in the Polish constitution of 1921, where under article 2 we read: “Sovereign power in the Polish Republic resides in the Nation. The organs of the Nation are: in the domain of legislation – the Sejm and the Senate, in the domain of executive

⁷ J. Justyński, *Historia doktryn polityczno-prawnych*, Toruń 2000, p. 462.

⁸ *Konstytucja Rzeszy Niemieckiej z 11 sierpnia 1919 roku (The constitution of the German Reich of 11 August 1919)*, [in:] *Powszechna historia...*, p. 204.

power – the President of the Republic jointly with the responsible ministers, and in the domain of the judiciary – independent Courts”⁹. Similar forms of the concept of the sovereignty of the people were adopted in other constitutions, including the constitutions of Austria, Czechoslovakia, Estonia, Finland, Lithuania, and Latvia. The tendency to incorporate the same principle of state organisation illustrates its universal relevance in establishing democratic standards of order by modern states in the process of their development.

In the period between the two world wars, European authoritarian and fascist states rejected the idea of the sovereignty of the people. A characteristic example of this is the Polish constitution of 1935 which transferred that power into the hands of one individual. Under article 1, we read: “At the Head of the State is the President of the Republic. On him rests the responsibility to God and history for the fate of the Nation. [...] He is vested with uniform and indivisible state power”. Article 3 adds further: “The State Organs subordinate to the President of the Republic are the Government, Sejm, Senate, Armed Forces, Courts, State Inspection”¹⁰. In Germany, the head of state law of 1 August 1934 conferred power to the Leader (Führer) and the Chancellor of the Reich, who became the central figure of totalitarian rule.

After the Second World War, European countries opening to liberal-democratic ideas begin to introduce into their systems of government the principle of the sovereignty of the people. The Italian constitution of 1947 proclaimed a democratic republic and underscored that: “Sovereignty belongs to the people who execute it through forms and within limits defined by the constitution”¹¹. Accordingly with the principle of the sovereignty of the people, this constitution prescribes the establishment of extensive democratic institutions to implement this principle.

⁹ Konstytucja Rzeczypospolitej Polskiej z 17 marca 1921 (Constitution of the Polish Republic of 17 March 1921), [in:] *Konstytucje w Polsce...*, p. 101.

¹⁰ *Ustawa Konstytucyjna z 23 kwietnia 1935 roku (Constitutional Act of 23 April 1935)*, [in:] *ibidem*, p. 115.

¹¹ *Konstytucja Republiki Włoskiej z 27 grudnia 1947 roku (Constitution of the Republic of Italy of 27 December 1947)*, [in:] *Konstytucje Finlandii, Włoch, Niemieckiej Republiki Federalnej, Francji*. Collection of texts, compiled by A. Burda and M. Rybicki, Wrocław 1971, p. 155.

The Basic Law of the Federal Republic of Germany of 1949 drawing on its democratic tradition adopted the idea of the sovereignty of the people as the foundation of the German system of government. Article 20, point 2 states: “All state authority emanates from the people. It is exercised by the people by means of elections and by separate legislative, executive and judicial organs”¹². This constitution also provides for extensive democratic institutions to cater to that principle.

The constitution of the Fifth French Republic, remaining in effect to this day, upholds the principle of the sovereignty of the people of the previous constitutions where, under article 3, it states that: “Sovereignty belongs to the people who execute it through their representatives and by means of referenda”¹³. The French system of government rests on this principle, despite undergoing many systemic changes since the French revolution.

The Soviet Union and countries of Eastern Europe, which became socialist states after the Second World War, adopted in their constitutions the principle of the sovereignty of the people, expressed as “sovereignty of the urban and rural working classes”, taking their cue from the radical ideas of the French Revolution and Marxist ideas. A good example of this is given by the Polish constitution of 1952, where under article 1, point 2, we read: “In the Polish People’s Republic the power lies with the working population in cities and the country”. Article 2, point 1 expands on the principle, proclaiming that: “The working population wields state power through its representatives, elected to the Sejm of the Polish People’s Republic and to national councils in elections that are universal, equal, direct, and by secret ballot”¹⁴. The proclaimed principle of sovereignty was a declarative norm, unsupported by any pluralistic mechanisms of state organisation, the power remaining wholly in the hands of the communist party.

¹² *Ustawa Zasadnicza Republiki Federalnej Niemiec z 23 maja 1949 roku (The Basic Law for the Federal Republic of Germany of 23 May 1949)*, [in:] *Ustawa Zasadnicza Republiki Federalnej Niemiec*, Poznań 1997, p. 93.

¹³ *Konstytucja Republiki Francuskiej z 4 października 1958 roku (Constitution of the French Republic of 4 October 1958)*, [in:] *Konstytucja Francji*. Introduction and translation. W. Skrzydło, Warszawa 1997, p. 34.

¹⁴ *Konstytucja Polskiej Rzeczypospolitej Ludowej z 22 lipca 1952 (Constitution of the Polish People’s Republic of 22 July 1952)*, [in:] *Konstytucje i podstawowe akty ustrojowe Polskiej Rzeczypospolitej Ludowej*, J. Mordwiłko, Warszawa 1988, pp. 38–39.

The constitutions of Southern and South-Western European countries, swept by the third wave of democratisation in the middle of the seventies, adopt the idea of the sovereignty of the people in a more developed form of state organisation. The first of these – the Greek constitution of 1975, under article one states: “1. The political system in Greece is that of a parliamentary republic. 2. Sovereignty of the people is the basis of the political system. 3. All authority emanates from the people and nation and is exercised in conformity with the Constitution”¹⁵.

Portugal’s constitution of 1976, under article 3, point 1, declares: “Sovereignty, one and indivisible, rests with the people, who exercise it in forms laid down in the Constitution”¹⁶.

The constitutions of Greece and Portugal by adopting the republican form of government consequently implemented the relevant systemic mechanisms.

On the other hand, the declaration by the Spanish constitution of 1978 of the principle of the sovereignty of the people may raise doubts as the adopted form of government is a monarchy. Article 1, point 1 proclaims: “National sovereignty rests with the people of Spain, from whom all state powers emanate”¹⁷. The inclusion of the idea of the sovereignty of the people in the Spanish constitution, its passage in a referendum in 1978 and its signing by the king of Spain should be viewed as a certain compromise between the ideas of republicanism and a democratic monarchy.

The constitutions of Central and Central-Eastern Europe, adopted during a period of political transformation in the 1990s, incorporate the principle of the sovereignty of the people in an identical or similar legal form. Each of the 17 constitutions of countries ranging from Albania to Hungary provides for the principle of the sovereignty of the people in a liberal-democratic construction. On closer inspection of its wording in the constitution, it is easy to observe its three elements: the source of power, the

¹⁵ *Konstytucja Grecji z 11 lipca 1975 (Greek constitution of 11 July 1975)*, [in:] *Konstytucja Grecji*, Warszawa 1992, p. 5.

¹⁶ *Konstytucja Republiki Portugalskiej z 2 kwietnia 1976 roku (Constitution of the Republic of Portugal of 2 April 1976)*, [in:] *Konstytucja Portugalii*, Warszawa 2000, p. 38.

¹⁷ *Konstytucja Hiszpanii z 27 grudnia 1978 roku (Spanish Constitution of 27 December 1978)*, [in:] *Konstytucja Hiszpanii*, Warszawa 1993, p. 32.

assignment of power and the forms of execution of that power. This type of construction of sovereignty of the people is espoused in the Croatian constitution of 1990, in article 1, points 2 and 3: "In the Republic of Croatia power emanates from the people and belongs to the people who form the commonwealth of free and equal citizens. The people exercise their power through the election of their representatives and by means of direct popular vote"¹⁸.

A similar legal solution has been adopted by the 1993 constitution of the Russian Federation, in article 3, points 1–3: "The vehicle of sovereignty and the only source of power in the Russian Federation are its multinational peoples. The people exercise their power directly, as well as indirectly through the organs of territorial self-governments. The supreme direct manifestation of the power of the people is through referenda and free elections"¹⁹.

The constitutions of the Baltic republics: of Estonia of 1992, of Lithuania of 1992 and of Latvia of 1922, adopt an abbreviated form of the principle of the sovereignty of the people, restricting itself to indicating the supreme power being vested in the people – the expression which was popularly adopted by national states in Europe formed after the First World War.

In the construction of the legal formula of the principle of the sovereignty of the people most of the European constitutions stress two elements: the assignment of authority and the form of exercising that authority. The wording in the Polish constitution of 1997 is characteristic, and comes down to expressing, under article 4, points 1 and 2, that: "Supreme power in the Republic of Poland is vested in the Nation. The Nation shall exercise such power directly or through their representatives"²⁰.

Summing up the development of the process of adopting the idea of the sovereignty of the people as the systemic principle of a democratic state, it

¹⁸ *Konstytucja Republiki Chorwacji z 22 grudnia 1990 (Constitution of the Republic of Croatia of 22 December 1990)*, [in:] *Konstytucja Republiki Chorwacji*, Warszawa 1995, p. 15.

¹⁹ *Konstytucja Federacji Rosyjskiej z 12 grudnia 1993 roku (Constitution of the Russian Federation of 12 December 1993)*, [in:] *Konstytucja Rosji*, Warszawa 2000, p. 40.

²⁰ *Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 (Constitution of the Republic of Poland of 2 April 1997)*, [in:] *Konstytucja Rzeczypospolitej Polskiej*, Warszawa 1997, p. 5.

should be noted that the process is universal in Europe and all modern constitutions express this idea in a formula identical or similar to the one conceived and developed by the creators of constitutional order, based on national tradition and models from other countries. The most important in this construction is the fact that it adopts a democratic idea which vests power in individual nations.

THE PRINCIPLE OF POLITICAL REPRESENTATION

The idea of political representation finds expression in the works of numerous thinkers of the Age of Enlightenment and the latter part of the period of development of liberal-democratic states. The clearest exposition of the value of this concept of government is provided by: Charles Montesquieu (*The Spirit of Laws*, 1748) and John Stuart Mill (*On Representative Governmen*, 1861).

The effect of political practice of governments in England and France since the 18th century was the development of a form of government through representation – the parliament. In place of bodies of nobles and other estates, bodies of national representation developed – representing the whole nation, not a particular class or estate. In effect, parliamentary governments were established accountable to the parliament.

In England, documents of a constitutional nature had tremendous importance to the development of parliamentary rule: *The Bill of Rights of 1689*, *The Parliamentary Representation Act for the Peoples of England and Wales of 1823* and *The Parliamentary Act of 1911*²¹. The position of Parliament was steadily increasing to the detriment of the monarchy. During the 18th and 19th centuries a parliamentary system of government developed in England, which was based on a concept of no responsibility on the part of the monarch and responsibility on the part of the ministers in power.

²¹ *Bill o Prawach z 13 lutego 1689 roku (The Bill of Rights of 13 February 1689), Ustawa o Reprezentacji Ludu Anglii i Walii w Parlamencie z 7 czerwca 1823 roku (The Parliamentary Representation Act for the Peoples of England and Wales of 7 June 1823), Ustawa o Parlamencie z 1911 roku (The Parliamentary Act of 1911), [in:] Powszechna historia..., p. 310 et seq.*

In France, a great step towards representative authority was made with the constitutional acts of the French Revolution period. The constitution of 1791 clearly adopts the principle of political representation. In article 12, we read: "The Nation, from which all power exclusively emanates, may execute that power only through delegation". This delegation the French constitution vests in the legislative body and the king. Article 13 says: "Legislative power is vested in the National Assembly (*Assemblée Nationale*), composed of temporary representatives freely elected by the people, which shall exercise that power, with the approval of the monarch, in the manner determined hereinafter"²².

The reorganization of the institutional structure of France by the French constitution during the revolutionary period marked the beginning of the model of the political representation in the form of representatives of the people assembling in a national representative body. It rejected, however, the concept of direct democracy government. From then on French constitutions adopting the principle of representation expand the structure of government in which the people exercise their political power through their representatives as well as through referenda. The concept of political representation becomes the basic form of government, and a referendum only a supplementary form, used to determine issues of great public importance.

The principle of representation gave rise to the postulate of universality and equality of political rights, especially the right to vote. This meant that each and every citizen should have the right of suffrage in public matters – and each vote should have equal power.

Reform of the election rights in 19th century England and after the First World War resulted in the right of suffrage becoming universal and in the building of sufficient foundations to implement the full principle of representation. In France the road to expansion of suffrage rights was more complex. The constitution of the Third Republic, being the model of republican representation democracy, gave universal suffrage only to men. The expansion of suffrage to women did not come about until after the Second World War.

²² *Konstytucja Francuska z 3 września 1791 roku (French Constitution of 3 September 1791)*, [in:] *Powszechna historia...*, pp. 66–67.

In national states, which after the First World War were forming the beginnings of their institutional structure on the republican example, it was common to adopt the principle of representation and its two chamber structure. The constitutional regulation emphasised the role of state power wielding bodies. A characteristic example is provided by the Polish constitution of 1921, pursuant to which, under article 2, the organs in the domain of legislation are the Sejm and the Senate, in the executive area – the president and the ministers, and judicial power is vested in the courts. Similar formulas of political representation were found in constitutions of other European countries.

The constitutionality of the idea of political representation confirmed a tendency, even in those times, to make universal the liberal-democratic systemic principles of the Enlightenment, which represented civilization's universal values.

In authoritarian states, constitutions adopted the legal structure of state organs oriented towards the concentration of power in the hands of one individual. In place of "organs of the nation", they provided "organs of state" under the sovereignty of an authoritarian organ. Representative organs elected by popular vote were to operate under the supervision of the supreme state organ. The Polish constitution of 1935 represented a typical example of the adoption of systemic structures geared to the requirements of a single individual in power. Similar solutions were adopted by other countries, such as, Austria, Estonia, Lithuania, and Latvia, which modified their current constitutions or adopted new ones in the second half of the 1920s and in the 1930s. This model was rejected after the Second World War as contrary to the ideals of the dominant liberal-democratic tendencies of those times.

The constitutions of the Soviet Union and other socialist countries adopted a model of representation based on the structure of the sovereignty of delegates' councils, the Supreme Soviet being the foremost. This model of representation was prescribed by the constitutions of the Soviet Union of 1936 and 1977. The constitution of 1977 reads under article 2: "The working classes exercise state power through Soviets of People's Deputies, which constitute the political foundation of the USSR". Article 3, on the other hand, restricts that representation stating that the "organisation and functioning of the Soviet state follows the principle of democratic centralism" [...].

Article 6 of this constitution in fact annulled the idea of representation by stating that the “leading and guiding force in Soviet society, the nucleus of its political system and of all state organisations is the Communist Party of the Soviet Union”²³. These provisions were, thus, a legal fiction – serving to build a democratic facade for the, in fact, authoritarian rule of the communist party²⁴.

The 1946 constitution of the Fourth French Republic was probably the only one, among the other constitutions of liberal-democratic countries, which adopted and makes a distinction between the attributes of the exercise of power by different entities “in the scope of issues of a constitutional nature” and “other matters”. Article 3 states that “Sovereignty is vested in the French People [...]. They exercise this power in matters of constitutional nature through their representatives as well as through referenda. In all other matters they exercise it through their deputies in the National Assembly, elected by direct universal, equal, suffrage”²⁵.

The constitution of the Fifth French Republic, while sanctioning the representative form of government and allowing for referenda in specific matters, does not make a distinction between matters belonging to different entities of public authority. Article 3, point 1, of this constitution precisely states that “National sovereignty is vested in the people who exercise it through their representatives and through referenda”²⁶.

The Italian constitution of 1947, as one of the first after a period of totalitarian regime, adopted for the realisation of the sovereignty of the people a form of political representation expressed in the structure of the organs of the legislative, executive and judicial branches. Appropriately, it proclaims the institution of popularly elected representative organs, parliamentary responsibility and constitutionality control.

²³ *Konstytucja (ustawa zasadnicza) Związku Socjalistycznych Republik Radzieckich z 7 października 1977 roku (Constitution – basic law – of the Union of the Soviet Socialist Republics of 7 October 1977)*, [in:] *Konstytucja Związku Socjalistycznych Republik Radzieckich*, Warszawa 1977, pp. 44–45.

²⁴ J. Baszkiewicz, *Władza*, Wrocław 1999, p. 158.

²⁵ *Konstytucja Republiki Francuskiej z 13 października 1946 roku (Constitution of the French Republic of 13 October 1946)*, [in:] *Powszechna historia...*, p. 113.

²⁶ *Konstytucja Republiki Francuskiej z 4 października 1958 roku (Constitution of the French Republic of 4 October 1958)*, [in:] *Konstytucja Francji...*, p. 34.

The 1949 Basic Law for the Federal Republic of Germany provides an expanded formula of the principle of representation, under article 20, point 2: "All state authority emanates from the people. It is exercised by the people by means of elections and voting and by separate legislative, executive and judicial organs"²⁷. The constitution determines in detail the federal and laender entities of representation.

The constitutions of Southern and South-Western Europe, adopted during the period of democratic renewal, express the principle of political representation in different ways. The Greek constitution of 1975 does this in the part dealing with the organisation and functioning of the state where it enumerates the particular bodies of power in keeping with the principle of the separation of powers. Legislative powers are vested, in accordance with article 26, point 1, in the Chamber of Deputies and the president of the republic, and according to article 51, point 2 – deputies represent the people²⁸.

The Portuguese constitution of 1976, in the part devoted to the organisation of public authority, indicates the organs of the sovereignty of the people (article 110), which include the president, the Assembly of the Republic, the government and courts²⁹. With these organs rests the execution of functions of public authority in accordance with the constitution.

The Spanish constitution of 1978, on the other hand, prescribes under article 66 that the General Cortes represent the Spanish people and consist of the Congress of Deputies and a Senate. The General Cortes is vested with legislative powers. The principle of representation is, thus, embodied in state organs which are elected by popular vote.

Constitutions of Eastern and Central-Eastern Europe, adopted in the period of political transformation in the 1990s, express a clear principle of political representation in a separate normative formula. An analysis of constitutional provisions provides the basis to indicate two constructions of the principle of representation. The first expresses the idea that the people exercise state authority: 1) through representative organs or organs of

²⁷ *Ustawa Zasadnicza Republiki Federalnej Niemiec... (The Basic Law for the Federal Republic of Germany...)*, p. 22.

²⁸ *Konstytucja Grecji... (Greek Constitution...)*, p. 22.

²⁹ *Konstytucja Republiki Portugalskiej... (Constitution of the Republic of Portugal...)*, p. 89.

state authority, and 2) without intermediaries or through referenda. It is adopted in the constitutions of Albania, Belarus, Bulgaria, Czech Republic, Russia, Rumania, and Ukraine. The second construction stresses the idea of the people exercising state authority: 1) through elected representatives, and 2) directly or through referenda. This construction was adopted in the constitutions of Croatia, Estonia, Lithuania, Poland, Slovakia, Slovenia, and Hungary.

Basically speaking, constitutional provisions which provide for execution of authority through representative organs or organs of state authority express a logical legal construction achievable in political practice. The concept of execution of authority, on the other hand, through elected representatives raises doubts of a legal nature. In logical legal constructions it is accepted that execution of public authority is vested in state organs or self-government organs, not individual elected representatives. Elected representatives of the people, after the constitution of the organ of authority, take on the function of a public authority. Such objections aside, it should be noted that the constitutional provisions in place express the principle of political representation and provide the basis for the functioning of the organs of public authority.

THE PRINCIPLE OF SEPARATION OF POWERS

The idea of separation of powers formed by the English philosopher John Locke (*Two Treatises of Government*, 1690) and developed by the French political philosopher Montesquieu (*The Spirit of Laws*, 1748) formed a basic principle on which all modern constitutions base their construction of a governmental structure. Democratic constitutions adopt the separation of powers principle, in one sense, by distinguishing three powers – legislative, executive and judicial, and in another sense – by concentrating the particular powers in separate hands. The idea of separation of powers became a guarantee of freedoms and liberties from the State to each and every individual and of democratic mechanisms by which public authority functions.

The first example of implementing the idea of the separation of powers in documents of constitutional nature was provided by the French Declara-

tion of the Rights of Man and of the Citizen of 1789 where under article 16 we read: „A society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.”³⁰ The Declaration, a constitutional document laying out republican principles of a state, places emphasis on the separation of powers as a means of securing individual freedoms.

The French constitution of 1791, which develops the idea of the Declaration of the Rights of Man and of the Citizen, adopts a rigorous separation of powers:

„Article 13. Legislative power is vested in the National Assembly (*Assemblée Nationale*), composed of temporary representatives freely elected by the people, which shall exercise that power, with the approval of the monarch, in the manner determined hereinafter.

Article 14. The government is monarchical: executive power is vested in the king and is exercised under his authority by the ministers and other competent officials, in the manner hereinafter described.

Article 15. Judicial power is vested in judges elected to a definite term by the people”³¹.

The concept of the separation of powers among the legislative, executive and judicial, provided for in the French constitution, served as a model for European constitutionalism, recurring in all modern constitutions.

The Polish constitution of 1791, promulgated a little earlier than the French constitution, adopts the principle of the separation of powers and distinguishes, under article 5, separate legislative, executive and judicial powers, concentrated in different hands. This constitution, however, had little effect, as it had to operate within a still feudal system, whereas the French constitution was „the first constitution of a civil society in Europe”³².

The 1787 constitution of the United States of America introduced a rigorous separation of powers much earlier, relying on a system of checks and balances which we do not come across in any other documents of this type. The constitution placed legislative power in Congress composed of a Senate

³⁰ *Deklaracja Praw Człowieka...*, p. 64.

³¹ *Konstytucja Francuska...*, pp. 66–67.

³² M. Szczaniecki, *op.cit.*, p. 346.

and a House of Representatives. Executive power was vested in the President. Judicial power was vested in the Supreme Court³³.

The division of power among the legislative, executive and judicial, begun during the French Revolution, was later adopted under similar formulas in the French constitutions of the Third, Fourth and Fifth Republics. Separation of powers was, of course, alien to the constitution granted by the king – the French Charter of 1814. A similar approach was reflected in later constitutional acts of France which provided the country's structures of government with authoritarian forms.

The 1871 and 1919 constitutions of the German Reich adopted the concept of the separation of powers among three branches of government and vested them with separate powers. Legislative powers thus rested with the Reichstag and Reichsrat. Executive power was vested in the President and the government. Judicial power rested with the State Court and Laender courts³⁴.

The Polish constitution of 1921, taking its queue from the French, adopted the concept of separation of powers. The national legislative organs were represented by the Sejm and the Senate, the executive – by the President and responsible ministers, and the judicial – by independent courts.

Constitutions of European national states established after the First World War also took up the French model of division of power among three organs of the body politic that reflected the idea of separation and balance of the highest authorities of the state.

Fascist and authoritarian states – Germany, Italy, Spain and Portugal – rejected the principle of power separation and vested all power in the leader of the nation, who assumed full and indivisible state power. The era of dictatorial rule in those countries came to an end with the overthrow of the fascist regimes in Germany and Italy and the death of the leaders of Portugal and Spain.

After the Second World War, the 1946 French constitution of the Fourth Republic, those of Italy of 1947, of the Federal Republic of Germany of 1949,

³³ *Konstytucja Stanów Zjednoczonych z 17 września 1787 roku*, Warszawa 1982, pp. 5, 19, 27.

³⁴ *Konstytucja Rzeszy Niemieckiej z 11 sierpnia 1919 roku*, [in:] *Powszechna historia...*, pp. 209, 212, 215.

and of the French Fifth Republic of 1958 express the principle of separation of powers in their respective State structures. In France, legislature is embodied in the parliament composed of the National Assembly and the Senate, the executive is represented in the President of the Republic and in the government, and the judiciary is represented by independent courts. In Italy, legislature is placed in the Parliament composed of a Chamber of Deputies and a Senate, executive power rests with the President of the Republic and the Council of Ministers, and judicial power is vested in the common courts of law. In the Federal Republic of Germany, legislative power is vested in the Federal Parliament and the Federal Council, executive power in the Federal President and Federal Government, and judicial power in the courts.

The 1936 and 1977 constitutions of the Soviet Union, as well as the constitutions of the socialist states of Central and Eastern Europe which adopted the socialist model, rejected the principle of separation of powers as a principle of the organization and functioning of state authority. In its place they adopted the principle of unitary state power and superiority of representative organs over executive organs. The normative model of state power organisation was just a facade for the hegemonic rule of the communist party.

During the third wave of a democratic movement sweeping southern Europe in the 1970s, the 1975 constitution of Greece, those of Portugal of 1976 and of Spain of 1978 adopted a clearly formed principle of power separation, on which they based the organisation and functioning of state power. The Greek constitution, when determining the organisation and functions of the state, adopted the separation of powers principle by stating, under article 26, that legislative powers are exercised by the Chamber of Deputies and the President of the Republic, executive powers is vested in the President of the Republic and the government, and judicial power in the courts whose decisions are proclaimed in the name of the people of Greece³⁵.

The Portuguese constitution proclaiming its democratic principles of state organisation under article 2, lists among them “the separation and interdependence of power”³⁶, and then consistently implements that division.

³⁵ *Konstytucja Grecji...*, p. 22.

³⁶ *Konstytucja Republiki Portugalskiej...*, p. 38.

Legislation is vested in the General Cortes composed of the Congress of Deputies and a Senate. Executive power is vested in the king and government, and judicial power – in independent courts.

The countries of Eastern and Central-Eastern Europe adopting new constitutions during political transformation in the 1990s adopted democratic political values, including the principle of the separation of powers. The legal and organisational construction of the principle of the separation of powers finds expression in two formulas. One is expressed in a clear constitutional provision of the principle of the separation of powers. This type of regulation appears, for instance, in the Albanian constitution of 1991, under article 3: „The fundamental principle of state organization is the division of the legislative, executive and judicial powers”³⁷. Similarly in the constitution of Croatia of 1990, those of Bulgaria of 1991, of Macedonia of 1991, of Slovenia of 1991, of Estonia of 1992, of Yugoslavia of 1992, of Lithuania of 1992, of Russia of 1993, of Belarus of 1994, Ukraine of 1996, and Poland of 1997.

The Polish constitution adopts the extended formula of the principle of division of power, indicating both to the objective side and the subjective side of power wielding as well as the type of this power and its carriers. In these matters article 10 of the constitution of the Republic of Poland proclaims:

“1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.

2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and judicial power in courts and tribunals”³⁸.

The second formula is expressed in defining the division of state power proclaimed in the text of the constitution. This type of regulation is adopted in several new constitutions, including that of Hungary of 1990, of Rumania of 1991, of the Czech Republic of 1992, and of Slovakia of 1992. The prin-

³⁷ *Ustawa z 29 kwietnia 1991 roku o podstawowych uregulowaniach konstytucyjnych (Law of 29 April 1991 on basic constitutional regulations)*, [in:] *Konstytucja Albanii*, Warszawa 1997, p. 25.

³⁸ *Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997...*, p. 6.

ciple of the separation of powers is not declared in these constitutions, only expressed corporeally in the normative part of constitutional provisions.

The fact that European constitutions adopted the principle of the separation of powers on such a scale proves its usefulness in establishing democratic systems of government and in the functioning of state authority structures in practice. The process of accepting this principle resulted in its widespread adoption in constitutions and modern day systems of government. The principle of power separation became an important factor of guaranteeing individual freedoms and democratic systems of government.

THE PRINCIPLE OF POLITICAL PLURALISM

The principle of political pluralism is one of the basic principles of state power organisation, plainly indicated in modern day constitutions. It comes down to the recognition of political parties as the subject of political participation in the process of executing public authority. Recognition of political parties in constitutions of countries is the result of the institutionalisation of political parties which took place after the Second World War³⁹. In particular, it means considering political parties to be organisations of a special type, different from the numerous public organisations operating in a particular country. The constitutional regulation is of a general nature and refers to all political parties.

The Italian constitution of 1947 expresses political pluralism in its provision to its citizens of the right to association in parties, stating under article 49 that "All citizens have the right to freely associate in parties to contribute through democratic processes to determining national policies"⁴⁰. This provision indicates not only the right of citizens to associate, but also the methods of activity of political parties and the field of public activity. The expression of this idea came about soon after the collapse of the fascist regime and efforts were made to establish democracy in Italy, and reflected

³⁹ K.A. Wojtaszczyk, *Konstytucjonalizacja partii politycznych*, [in:] W. Skrzydło, K.A. Wojtaszczyk, *Instytucjonalizacja partii politycznych w państwie demokracji parlamentarnych*, Warszawa 1989, p. 7.

⁴⁰ *Konstytucja Republiki Włoskiej z 27 grudnia 1947 roku...*, p. 168.

the deep concern for the application of liberal and democratic principles to State and public institutions.

The German Basic Law of 1949, establishing a democratic system of government, incorporates a clear provision of political pluralism under article 21: "Political parties participate in the forming of the political will of the people. They may be freely established. Their internal organisation shall conform to democratic principles. They shall publicly account for the sources and use of their funds as well as for their assets"⁴¹. The emphasis in this regulation is placed on officially allowing political parties to contribute to the formation of the political will of the people, and on their internal structure conforming to democratic principles. The Basic Law of Germany, arising from the country's appalling past experience, attaches much importance to the aims and methods of party activity, stating further on, in the same article: "Parties which, by reason of their aims or the behaviour of their adherents, seek to impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court decides on the question of unconstitutionality".

The formulation of such constitutional provisions demonstrates the acceptance of liberal and democratic rules of public life.

The constitutional requirement of contributing to the formation of the political will of the people is expounded in Germany by the law on political parties, the first passed in 1967, and the current one in 1994. The law specifies, in particular, participation of parties in elections at the federal, laender and community levels with the aim of realising political aims in the process of the formation of the political will of the state and influencing the development of parliament and government.

The principles of participation of political parties in elections are also regulated to a great extent by, apart from the Basic Law and law on political parties, the German electoral law which exerts considerable influence on the functioning of the party system and the role of parties in the political system of the Federal Republic of Germany.

The 1958 French constitution of the Fifth Republic, forming a more pragmatic solution to France's system of government, adopts the principle

⁴¹ *Ustawa Zasadnicza Republiki Federalnej Niemiec...*, p. 95.

of political pluralism under article 4: “Political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry on their activities freely. They must respect the principles of national sovereignty and democracy”⁴².

The constitution confirms three main requirements of the political parties. Firstly – the freedom of their establishment and development of their activities on the basis of the 1991 law on associations. Secondly – their duty to conform to the principles of national sovereignty and democracy. And thirdly – participation in selecting representative organs and in expressing the will of the people through suffrage.

Matters of financing political parties in France are regulated by the law of 1988 on the openness of financing in political life. The law covers matters of party financing in presidential and parliamentary elections as well as the financing of their daily activities.

The Greek constitution of 1975, first of the constitutions of Southern European countries swept away by the democratic wave of the 1970s, incorporates the principle of political pluralism, under article 29,: “Greek citizens who are entitled to vote may freely establish political parties and join them; the organisation and activities of those parties must uphold the free functioning of the democratic political system. Citizens who have not yet acquired the right to vote can join youth organisations of political parties”⁴³. The constitution provides the freedom to establish parties and to participate in their activities, on condition the party does not act against democracy. At the same time, the constitution imposes a ban on any activity or manifestation in favour of political parties by judges, military personnel, personnel of the security forces and civil servants. Also banned from taking any action on behalf of parties are employees of corporate entities of public law, public enterprises and local authorities.

The Portuguese constitution of 1976 incorporates the principle of political pluralism under article 10, point 2: “Political parties shall assist in bringing about the organisation and expression of the will of the people and shall respect the principles of national independence, the unity of the State

⁴² *Konstytucja Republiki Francuskiej z 4 października 1958 roku*, [in:] *Konstytucja V Republiki Francuskiej*, przekł. i oprac. Z. Jarosz, Warszawa 1997, p. 9.

⁴³ *Konstytucja Grecji...*, p. 23.

and political democracy”⁴⁴. The constitution, under article 51, provides the freedom to establish and join political parties to work jointly and democratically to give expression to the will of the people and to organise political power.

The Spanish constitution of 1978 defines political pluralism as the highest value of the legal system of the State. Political parties are the expression of this pluralism, pursuant to article 6 of the constitution. The role of the party is to “contribute to the formation and expression of the will of the people”⁴⁵. Parties are considered an essential instrument of political participation. The creation and exercise of their activities are free in so far as they are within the framework of the Constitution and the law. Their internal structure and functioning must be democratic.

Constitutions of a socialist type rejected political pluralism and adopted the principle of the hegemony of the communist party. For example, the 1977 constitution of the USSR, under article 6, states that: “The leading and guiding force of Soviet society, the nucleus of its political system and of all state and public organisations is the Communist Party of the Soviet Union”⁴⁶. Similar manifestations were carried by constitutions of other socialist states. This formed the basis on which the indivisible rule of the communist party apparatus rested.

Constitutions of Eastern and Central-Eastern European states, adopted during the period of political transformation in the 1990s, universally incorporated the principle of political pluralism, although with slight differences. The most common is the provision of the freedom to establish political parties and to conduct their activities, one that forms the essence of political pluralism. Some require the upholding of democratic principles, and some narrow it down to the conformity with the constitution and other laws. Only but a few constitutions, however, place emphasis on the significant issue of political parties having the capacity to influence by political methods the development of State policy. Many constitutions express sensitivity

⁴⁴ *Konstytucja Republiki Portugalskiej...*, p. 41.

⁴⁵ *Konstytucja Hiszpanii...*, p. 33.

⁴⁶ *Konstytucja (ustawa zasadnicza) Związku Socjalistycznych Republik Radzieckich...*, p. 45.

to events of the past and prohibit political parties and ideologies contradictory to democratic principles.

The Albanian constitution of 1991 declares, under article 6, political pluralism a principle of democracy in the state. Political parties are allowed to conduct their activity only in conformity with the law. The constitution prohibits activity of political parties in military units and institutions, institutions of the Interior Ministry, Foreign Affairs Ministry, as well as organs of the general attorney and of the judiciary.

The Belarusian constitution of 1994 allows activity of political parties within the framework of the constitution and the laws, aimed at expressing the political will of the citizens and participation in elections. It prohibits, on the other hand, under article 5, the establishment and activity of political parties with the intent to change the constitutional system.

The Bulgarian constitution of 1991 adopts a general rule that the country's political life is based on the principle of political pluralism. The role of the party is the formation and expression of the political will of the citizens. The establishment of parties which aim at taking over state power by force is forbidden.

The Czech constitution of 1992 provides, under article 5, free and voluntary formation as well as free competition between political parties which respect the basic democratic principles and reject violence as a means of pursuing their interests. Citizens are given the right to establish and participate in political parties.

The Croat constitution of 1990 provides for the free establishment of political parties according to a territorial principle. At the same time, the constitution prohibits parties whose programme or activities pose a threat to the democratic constitutional order, independence, unity or territorial integrity.

The Lithuanian constitution of 1992 guarantees only to its citizens the right to freely associate in political parties on condition that their aims and activity shall not be contradictory to the constitution and other laws.

The Polish constitution of 1997 ensures the freedom to establish political parties and their functioning, as well as the right to free and equal association of citizens, with the aim of influencing by democratic means the development of state policy. At the same time, political parties that promote totalitarian methods and practices of Nazism, fascism and communism, as

well as those whose programmes or activities pursue or sanction racial or national hatred, violence for the purpose of achieving power or influence State policy or intend to keep in secrecy their structure or membership are forbidden.

The 1993 constitution of the Russian Federation provides political pluralism and a multiparty system and prohibits the creation of public organisations whose aims or activities promote changing, through the use of force, the foundations of the constitutional system and threaten the country's integrity.

The Romanian constitution of 1991 provides for political pluralism and, under article 8, the establishment of political parties which contribute to the formation and expression of the political will of the citizens, and respect national sovereignty, territorial integrity, the legal order and democratic principles.

The Slovak constitution of 1992, in article 29, provides the citizens the right to establish political parties and associate in them.

The Ukrainian constitution of 1996 provides for political pluralism and guarantees freedom to conduct political activity as well as freedom of association in political parties for the purpose of contributing to the formation and expression of the political will of the citizens, as well as participation in elections. It also forbids the establishment and operation of political parties whose programme objectives or activity are directed towards the abolition of the independence of Ukraine, forceful change of the constitutional order, abuse of sovereignty and territorial integrity of the State.

The Hungarian constitution of 1990, in article 3, provides for the freedom to establish and conduct the activity of political parties in conformity with the constitution, aimed at contributing to the formation and expression of the will of the people.

The constitutional provisions of fundamental or basic laws of the countries of Eastern and Central-Eastern Europe, which embarked on the path to democracy (true to liberal ideas) are proof that political pluralism has been universally applied in establishing a democratic political system, the will of the people has been formed, and political decisions for the benefit of all society developed.