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Principles of the political system of the Republic of Poland

Keywords: principles of the political system, political system, constitution, Republic of Poland

Słowa kluczowe: zasady ustroju politycznego, system polityczny, konstytucja, Rzeczpospolita Polska

Abstract

The subject of this study is to present principles of the system determine political character of the state and the system ruling in it of power. The analysis is covered constitutional regulations referring to the following principal principles: principle of the sovereignty of Nation, principle of democratic legal state, principle of freedom and of laws of individual, principle of the division of authorities, principle of the political pluralism, principle of the supreme position of the Constitution, principle of the decentralization of the official authority, principle of the decentralization of the official authority. The work is based on the legal-dogmatic method.

Streszczenie

Zasady ustroju politycznego w Rzeczypospolitej Polskiej

Przedmiotem opracowania jest ukazanie prawnych ram zasad ustroju, które określają charakter ustrojowy państwa i panujący w nim system władzy. Analizie poddano kon-

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stytucyjne regulacje dotyczące następujących zasad ustroju państwa: zasada suwerenności Narodu, zasada demokratycznego państwa prawnego, zasada wolności i praw jednostki, zasada podziału władz, zasada pluralizmu politycznego, zasada nadrzędności konstytucji, zasada decentralizacji władzy publicznej i samorządu terytorialnego, zasad społecznej gospodarki rynkowej. W pracy wykorzystano metodę prawną-dogmatyczną.

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In the Republic of Poland the catalogue of fundamental rules was entered into the Constitution from 2 April 1997 r.² A chapter is devoted to them and titled “Republic”. One should emphasize that catalogue contained in it isn’t closed. In the present article they will be analysed following principal principles. And it will be: principle of the sovereignty of Nation, principle of democratic legal state, principle of freedom and of laws of individual, principle of the division of authorities, principle of the political pluralism, principle of the supreme position of the Constitution, principle of the decentralization of the official authority, principle of the decentralization of the official authority³.

I.

The turn of the XVII and XVIII age brought, behind the matter among others of such thinkers like Thomas Hobbes or Jean Jacques Rousseau, comprehending the sovereignty of the Nation (of people). Of nation understood as bond political, giving authorization to act in one’s name for representatives. There was this opposite oneself of current monarchal power which considered itself the only overlord because sanctioned by very God⁴.

² Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, item 483). Here in after referred to as the Constitution of Poland.

³ More: *Basic Problems of Applying the Constitution of the Republic of Poland. Final Research Report*, ed. K. Działocha, Warsaw 2006.

⁴ See: E. Zieliński, *The universalism of political system principles espoused by European states*, “Polish Political Science Yearbook” 2009, vol XXXVIII, pp. 17–25.

The Constitution of Poland is expressing principle of the sovereignty of the Nation in Art. 4 sec. 1 the superior authority in the Republic of Poland belongs to the Nation. He results from this regulation, that in the state a Nation is an overlord, i.e. the one which is exercising authority. One should not understand comprehending the Nation here in sociological or historical but political meaning, as the bond of citizens which are entitled to voting rights. Sec. 2 Art. 4 states, that the Nation is exercising authority by its representatives or directly. To mark belongs, that ustrojodawca not without the cause first showed that the Nation was exercising its power by representatives and only in the second order directly, alone. He is happening this way because the Nation as the entire community entitled, isn't able permanently to perform his duties. Nation because, as the community a few million of people isn't in the state (organizationally) to manage you therefore representatives which on behalf of the entire community are exercising authority are being chosen.

From here a division into the indirect democracy is getting down (representative) and direct democracy. The representative democracy consists in filling up by authorised representatives (of mandataries) gave the political fine to the political will of the ones which authorised them for it. Fastening them to action has the card originating directly from the Nation, i.e. everyone which are entitled to action, but for different reasons alone they aren't filling her. Representatives receive authorizing to act by way of choices which constitute the fundamental element of democracy. The mandatory receives authorizing for the decision making in the parliament on behalf of the entire nation⁵.

The direct democracy consists in taking significant decisions for you (for ruling) directly by very overlord. When they already marked, this form of the administration is only supplementing the representative democracy at present. Many institutions serving the direct participation of the nation exist in the decision making. A referendum which relies on the decision making is a form the most spread in our times of the direct democracy of persons in cases important for you, by vote, through the circle authorised⁶.

⁵ More: A. Łabno, *The Sejm of the Republic of Poland and the Representation of Interests*, "The Sejm Review" 2014, fifth special edition, pp. 25–46.

⁶ See more: S. Grabowska, *Formy demokracji bezpośredniej w wybranych państwach europejskich*, Rzeszów 2009, pp. 37–48; P. Uziębło, *Demokracja partycypacyjna*, Gdańsk 2009,

The Constitution of Poland provides for two kinds of the referendum. The nationwide referendum and the local referendum. Article 125 of the Constitution of Poland state that in matters about the particular relevance for you a conducted nationwide referendum can be. Matters about the particular relevance for you it so, which for first, are spreading through territory of the entire country secondly, concern all citizens rather than only certain social groups. The Sejm is entitled to a right to order such a referendum by an absolute majority of votes in the presence of statutory at least half numbers of Members of Parliament or for the President of the Republic with the consent of the Senate expressed by an absolute majority of votes in the presence of at least half of the statutory number of senators. The constitution is implementing the requirement of the attendance of such a referendum. The result of the referendum is binding if it took part in it more than a half eligible to vote. There is this referendum about optional character⁷.

It is other kind of the nationwide referendum conducted on the base Art. 90 of the Constitution of Poland which giving consent to ratification by the Republic provides for with Poland of the international agreement, on the basis of which Poland can hand competence of the authority bodies over to the international organisation or the international body national in some matters. This referendum has optional character, because the Sejm is passing the resolution on choice of the mode of giving consent to ratification with absolute majority of votes in the presence of at least half of the statutory number of Members of Parliament. A passed act, giving consent to ratification of such an international agreement is other road. For her the reception from the Sejm is taking place with majority 2/of 3 voices in the presence of at least half of the statutory number of Members of Parliament and by the Senate with majority 2/of 3 voices in the presence of at least half of the statutory number of senators⁸.

Also Art. 235 of the Constitution of Poland provide for the feasibility of the nationwide referendum. It is happening in the situation of passing a bill

pp. 35–53; M. Musiał-Karg, *Referenda w państwach europejskich. Teoria, praktyka, perspektywy*, Toruń 2008, pp. 32–93.

⁷ M. Jabłoński, *Referendum ogólnokrajowe w polskim prawie konstytucyjnym*, Wrocław 2001, pp. 69–85; P. Uziębło, op.cit., pp. 155–159; S. Grabowska, op.cit., pp. 86–94.

⁸ E. Kuźelewska, *Referendum voting behaviour: Polish Referendum on Membership in the EU*, “Polish Political Science Yearbook” 2003, vol. XXXIII, pp. 38–50.

about the amendment to the Constitution, when the act on the amendment to the Constitution concerns regulations of the allocation and, II or XII, it is a group at least 1/5 of statutory number of Members of Parliament, the Senate or the President can demand the Republic, in the time of 45 days from the day of passing a bill by the Senate, approving conducts of the referendum. With the conclusion in this matter these entities are turning to the Speaker of the Sejm which is ordering immediately conducting the referendum in sequence 60 days of the motion date. The amendment to the Constitution is left accepted, if a majority was in favour of this change voting. So he doesn't have the requirement in this case as for the attendance. The referendum has optional character, because he can be conducted in only in the situation if one of authorised entities will file an application and only if the change concerns at least one of three chapters indicated in the Constitution⁹.

The Constitution of Poland in Art. 170 is also giving the possibility of settling substantial matters for inhabitants to only a part of territory. This way so members of self-government bond can decide, by way of the referendum, about matters applying to this bond, in it about cancelling the body coming from the direct election of the local government. An act is specifying in detail principles and the mode of conducting such a referendum¹⁰.

Also a folk initiative is the institution of the direct democracy. The folk initiative consists in possibility of initiating by the determined authorised group certain citizens of proceedings. In Poland for example a possibility of the submission of an application for ordering conducting the referendum (in nationwide referendum 500 of thousands of citizens and in the local referendum of 10% residents eligible to vote of the commune or the district and 5% inhabitants eligible to vote of the province). The folk initiative can assume also a form of the legislative initiative. Still if the authorised group of citizens has the right to start of folding a bill i.e. initiating the legislative procedure (as this way as for example in Poland group 100 of thousands of authorised citizens) then we have it for making with the so-called right of legislative initiative.

⁹ E. Zieliński, *Referendum w Polsce*, [In:] *Referendum w państwach Europy*, eds. E. Zieliński, E. Boksztanin, J. Zieliński, Warsaw 2003, pp. 221–224; M. Jabłoński, op.cit., pp. 91–99.

¹⁰ More: E. Olejniczak-Szałowska, *Prawo do udziału w referendum lokalnym. Rozważania na tle ustawodawstwa polskiego*, Łódź 2002, pp. 287.

II.

Principle of the democratic legal state was entered for the first time into the Polish constitutionalism through with December short story from 1989 r. to the Constitution from 1952 r. Small Constitution 1992 r. also principle the ones accepted. The current Constitution is giving her expression to the Republic of Poland in Art. 2 which is deciding, that Republic Poland is a democratic state legal, fulfilling principles of the social justice¹¹.

It is entertaining one another, that the conception constitutes the legal state pillar of the democratic legal state. Two conceptions are being distinguished in literature of legal state: formal and financial. The formal model of the legal state assumes only an existence of formal-legal dissolutions of state agencies providing with lawful functioning. In this model it isn't essential what values the law is expressing. He is an assumption, that the law is standing above you, this law appoints the scope of the rights and freedoms of the individual, as well as he determines limits of action of the power. This law which originates from competent bodies is right and it came into existence in the predicted procedure. Right contents aren't essential.

The financial model of the legal state assumes that a legalism of action of authorities and a system are the basis for action of the state effective their protections. This conception contains elements of the formalistic conception in itself and in addition he puts emphasis on contents of the created law. Because the law should include the catalogue of core values, of which should be a carrier.

State legal is functioning based on the principle of the law and order. The law-abidingness means obeying the law in the sphere of constituting him and applying. So the law and order is a demand directed to public authorities rather than to the individual. You law-abiding it so which bodies of the state as well as self-government authority are obeying the law in these two spheres in¹².

Obeying the law in the process of constituting him means for first order of creating the law by competent (competent) organs, secondly issuing the act

¹¹ More about transformation of political system in Poland K. Wojtaszczyk, *Political Spectrum of Poland*, "Polish Political Science Yearbook" 1991, vol. XXI, pp. 63–71.

¹² See: R. Uitz, *The rule of law in Post-Communist Constitutional Jurisprudence. Concerned Notes on a Fancy Decoration*, [In:] *Relocating the rule of law*, eds. G. Palombella, N. Walker, Oxford-Portland 2009, p. 71 et seq.

on the base other giving authorization to spend. The created act must be accomplishing also formal requirements, so as: to match the internal systematics of the given nude whether to obey specific linguistic rules. The act must be moreover signed by the competent person and properly announced. Obeying the law in the process of applying the law consists in the fact that the body applying the law is issuing individual decisions based on legal norms which have general and abstract character¹³.

So democratic legal state it so, which the law is reflecting an accepted socially system of values in. Doctrine is ranking among features of the democratic state: respect for human rights, sovereignty of the nation, tripartite division of the power, law and order, independence of courts. All these features must appear simultaneously so that it is possible to say we are dealing with the democratic law-governed state. In Poland a Constitutional Tribunal which recognised the democratic legal state as the harvest of principles, gave the significant role in determining conditions deciding about the fact that we are dealing with the democracy where every of them can be a distinct standard of the constitutionality of legal documents.

Art. 2 of the Constitution of Poland constitutes, that Republic Poland is a democratic state legal, fulfilling principles of the social justice. The legislator established by using the return “fulfilling principles of the social justice” to the conception of social state. Of you which has the task of being based on a guard of the good of citizens.

III.

Principle of freedom and of laws is one of fundamental rules determining the political system of the given state. For determining the status of the individual in the state the primary importance has the chapter two of the Constitution Republic of Poland titled “Freedom, rights and duties of the man and the citizen”. However here so-called triad, with which three general principles one another complementing each other constituting and determining the entire system are enacting laws and freedoms are decisive and they are it: the dig-

¹³ See more: P. Czarnek, *Zasada państwa prawa*, [In:] *Zasady ustroju III Rzeczypospolitej Polskiej*, ed. D. Dudek, Warsaw 2009, pp. 156–189.

nity¹⁴, the freedom and the equality¹⁵. Whereas for everyone a human dignity is a point of departure¹⁶.

The Polish legislator in Art. 30 of the Constitution of Poland accepted the Republic of Poland, that the inherent and inalienable human dignity constituted the source of liberties of both human rights and the citizen. She is inviolable, and for her the respect and the protection are a duty of official authorities. And so basic meaning was assigned to the principle of the human dignity. Notion the human dignity is current in all conceptions of individualistic comprehending the status of the individual. Natural laws, rather than a constituted law are the source of the human dignity. The principle of the dignity is inviolable. Very interested party cannot for her renounce it isn't possible also for her to carry, to limit or to hang legislator. Every man is entitled to a dignity and what's more equally. Grading the dignity is inadmissible. His subjectivity is a being of the human dignity (autonomy), that is freedom of acting according to the own will. The autonomy of each of us should however take the dignity of other people into account.

Principle of freedom, similarly to the principle of the dignity, one of central places is absorbing individuals in the catalogue of natural laws. She found her expansion in Art. of 31 sec. 1 and 2 of the Constitution of Poland. Ustrojodawca indicated in it, that the freedom of the man is coming the legal protection under and everyone is obliged to respect freedoms and laws other. One isn't allowed to force nobody to make it, of what the law doesn't demand from him. One should examine the principle of freedom from two points of view. In positive meaning it means the freedom of making everything what isn't by the forbidden law. The man must not so show the legal basis of his action. In negative meaning, the principle of freedom means that putting the order of taking the defined action per unit can take place only then, when the law provides for it. Both these aspects make up for formal comprehending the principle of freedom (the freedom as the scope of the appointed freedom with law).

¹⁴ More: D. Dudek, *Zasada przyrodzonej godności człowieka*, [In:] *Zasady ustroju III...*, pp. 43–64.

¹⁵ More: P. Czarnek, *Zasada równości wobec prawa*, [In:] *Zasady ustroju III...*, pp. 90–98.

¹⁶ E. Popławska, *The Protection of Fundamental Rights in a Digital Age. The case of Poland*, [In:] *Zbornik Radova Pravnog fakulteta u Splitu*, Split 2004, pp. 249 et seq.

In the state also a basis of equality belongs to elements locating individuals. He is expressing her Art. of 32 the Constitution of Poland which states that everyone are in view of the law equal. Everyone have the right to the fair treatment by official authorities and nobody can be discriminated in the political, social or economic life for any reason the basis of equality is expressing three elements: principle of equal rights, principle of equal treatment of everyone by official authorities, prohibition of discrimination in the political, social or economic life from any cause. The basis of equality means – in the most general perspective order of equal treating entities and similar situations. The basis of equality doesn't have ruthless character, so in certain situations he lets for diversifying the legal situation of similar entities. The basis of equality has universal character, because they are taking back to all fields of functioning of the society and to all diversities implemented by the law.

Saying both laws and freedoms of the individual one should also mention the possibility of limiting them, because as for the principle he doesn't have laws and absolute freedoms. The Constitution of Poland in Art. 31 sec. 3 allows for establishing restrictions in the scope of using around from constitutional laws and the freedom. In the formal aspect these restrictions can be established only in the act. In the financial aspect these restrictions can be established only for the protection of one of six enumerated values in Art. 31 sec. 3: of the state security, the public order, the environment, the public health, the public morality, the freedom and laws of other persons. However it is essential of appointing borders, apart from which such restrictions are in no case acceptable. One should show the proportionality rule and the conception here of the essence of individual laws and the freedom. An idea of the ban on the exaggerated interference is a being of the proportionality rule, i.e. recognition, that if established restrictions of laws and freedoms of the individual must already be, they can take place necessary only in the scope. The conception is deriving natures of laws and the freedom oneself from the German constitutionalism. He is working on the assumption. it is possible to distinguish certain primitives in the framework of every specific law and the freedom (core, nucleus), which such a law or the freedom generally speaking will not be able to exist, without and certain additional elements (border) which can

be taken hold and modified in the different way without destroying the law given to the identity or the freedom¹⁷.

IV.

The Conception engendered the division of the authority of the state oneself half the XVII age. John Locke is being regarded as the forerunner of this idea which delineated the principle functional (object) of division of the power; distinguished three spheres of functioning of authorities: creating the law (legislature), making it (executive) and thinking. However the conception is being associated with the person of, Charles Montesquieu which in work “about the spirit of laws”, popularized this conception assigning to separate organs (or for groups of organs) of three different types of the power, i.e. legislative, executive and judicial; it is principle of the organizational division (subjective). He propagated also a need of inserting instruments of the influence of one power to second. The conception arose as a result of willingness of the restriction of absolutism monarchal and with convincing about the need separating the function of creating the law from the function of making it. To constitute it had the guarantee of the freedom of the individual and comings into existence of the wide sphere of her activity free from the state interference.

The Constitution of Poland in Art. 10 sec. 1 is deciding about the division of the power: the System of the Republic of Poland is based on a division and a balance of the legislative branch, the executive branch and the judiciary branch. Article however 10 sec. of 2 the Constitution of Poland is listing the Republic of Poland of holders of individual authorities: legislative – the Sejm and the Senate, executive – the President and the ministry, judicial – courts and tribunals¹⁸. Some constitutional organs aren't located in a tripartite division. Some constitutional organs aren't located in a tripartite division. They

¹⁷ B. Banaszak, *Outline of Polish Constitutional Law*, Wrocław 2005, pp. 67–91; Ch. Stefanowicz, *Human rights in Poland selected issues*, “The Capital University Law Review” 1989, No. 18, pp. 175–183.

¹⁸ See more: R. Grabowski, *Zasada podziału władzy w Polsce*, [In:] *Zasady podziału władzy we współczesnych państwach europejskich*, eds. S. Grabowska, R. Grabowski, Rzeszów 2016, pp. 227–242. Also: B. Szmulik, *Zasada podziału władzy i równowagi władz*, [In:] *Zasady ustroju III...*, pp. 215–225.

are these are above all organs taken hold with regulations of the IX allocation of Constitution of Poland, titled “inspection authorities national and protections of the law”, i.e. Government Inspectorate, ombudsman, National Radio and Television Council. In the Constitution we can apart from that find situations, when specific activity is performed by the belonging body to generically of other power (e.g. right-creative activity in the form of regulations of bodies of the executive branch, prerogative of mercy of the President, control of the constitutionality of the law carried out by the Constitutional Tribunal).

According to Art. 10 sec. 1 of the Constitution of Poland relationships between three authorities after should be a Republic of Poland based on the principle of equilibrium. Meanwhile relating to special regulations a certain majority is seen (primacy) of the legislative branch (of the Sejm) towards the executive branch. Admittedly it is possible also to recognize this central item of the parliament as the certain reminiscence of the conception unities of the power, however taking into account superior bodies locating the whole of solutions, to reach belongs to the conclusion that the priority granted the legislature isn't thwarting the idea of the division of power and is matching nature of the democracy. This priority is noticeable relating to the arrangement of connections of governments assuming the cooperation of authorities, characteristic of the parliamentary-cabinet system¹⁹.

V.

The principle of the political pluralism in the Republic of Poland is establishing the Principle of the political pluralism Art. 11 of the Constitution of Poland constituting of Poland, that Republic Poland guarantees the freedom of creating and the action of political parties. Political parties are consisting on principles of the freedom and the equality of Polish citizens with a view to influencing with democratic methods for shaping of the politics you. These solutions allow to state, that ustrojodawca referred in this case for narrow

¹⁹ M. Grzybowski, *The System of Government in the Constitution of the Republic of Poland of 2nd April 1997*, [In:] *The Principles of Basic Institutions of the System of Government in Poland*, eds. P. Sarnecki, A. Szmyt, Z. Witkowski, Warsaw 1999, p. 152 and next; K. Prokop, *Polish constitutional law*, Białystok 2008, pp. 18–19; B. Banaszak, op.cit., pp. 57–58.

understanding the pluralism. Because he took him back to political parties. One should however recall also about wide referring including the political pluralism not only to the party but also to connections, societies or wheels²⁰.

The principle of the political pluralism assumes, above all, the existence of many political parties and hence the multitude of views and political programs. This principle demands moreover treating everyone of parties existing and being formed into the identical way. So this principle is implementing the multiparty system, moving the one-party system away in the process. However it doesn't mean that undemocratic parties can in this system function, that is so which would infringe article forbidding the Republic of Poland 13 the Constitution of Poland existences of political parties of both other organizations referring in their programs to totalitarian methods and practice of action of the Nazism, the fascism and the communism, as well as the ones which the program or activity are establishing or allows for the racial hatred and ethnic, applying the violence with a view to getting of the power or the influence on the politics you or predicts keeping structures secret or memberships.

Definition of the concept the party and principles of for it creating an act on political parties determines²¹. In the light Art. 1 sec. 1 of this act a political party is a voluntary organization, appearing under the definite name, standing oneself behind the target participation in the public life by exerting with democratic methods of the influence on shaping of the politics you or exercising the official authority.

Parties are formed under the register procedure. The registration is being carried out by the circuit court in Warsaw. In order to file an application it must be the right to vote backed up with the one thousand of signatures of having persons. With the moment of the entry in the register the party is purchasing the legal personality.

Subventions and subjective subsidies are a basic source of finance of political parties from the state budget. The amount of these profits depends on the result achieved in appointments for the Sejm. Parties cannot conduct

²⁰ More: J. Kuciński, W.J. Wołpiuk, *Zasada pluralizmu politycznego*, [In:] J. Kuciński, W.J. Wołpiuk, *Zasady ustroju politycznego państwa w Konstytucji Rzeczypospolitej Polskiej z 1997 roku*, Warsaw 2012, pp. 342–387.

²¹ Act of 27 June 1997 on political parties (c.t. Dz.U. 2018, item 580).

business activity, or conduct public collections. Profits on membership fees, donations, falls or records can however achieve. Also taking payments from natural persons is allowed. The party must amass all financial resources on banking accounts²².

VI.

In conclusion comprehending political principles is interpreted as legal norms which by virtue of their weight were left contained, above all, in the constitution of the given state. Principles of the system determine political character of the state and the system ruling in it of power. The catalogue of adopted principles in the given state made conditional is public and political processes accompanying their coming into existence. However, it is possible to point at the common catalogue of principles, constituting the model of core values of legal-political democracies. To rank among it belongs such principles as: sovereignties of the Nation, of democratic legal state, of division of authorities, locating individuals in the state.

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²² See more J. Sobczak, *Political parties' freedom in the Polish Constitution*, [In:] *Partie polityczne we współczesnym konstytucjonalizmie*, eds. M. Granat, P. Policastro, M. Sobczak, Lublin 2001, p. 204 et seq.

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