DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1997 № 1-4 (113-116)
PL ISSN 0070-7325

CENTRAL IDEAS OF THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2 APRIL 1997*

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1. 25 May 1997 was the first time in the history of Poland that a constitutional referendum took place. As a result of it a new Constitution was finally adopted. The strenuous work on its text conducted by the National Assembly (both houses), the Constitutional Committee of the National Assembly and its subcommittees was characterised by reoccurring discussions about the same problems that every now and again resulted in the formulation of new solutions many of which meant a return to the settlements that had previously been discarded. These procedural windings, the lengthening of the work, served the attainment of the final constitutional compromise. The Constitution - as it was mentioned from the initial stage of the work on its text[1] - refers to variety ideological currents and expresses values belonging to different axiological systems. However, as it was aptly indicated, this "axiological variety" makes the Constitution an entity that, is not necessarily eclectic.[2] The above-mentioned compromise, therefore, was not dilatory - i.c. consciously omitting all controversial matters it was a "positive" compromise constitutionalising all values that were advocated by a sufficiently representative parliamentary group provided the remaining groups were willing to consent.

2. The constitutional compromise was possible to reach thanks to the fact that while the new Constitution was formulated, those constitutional achievements and notions were reminded and developed on an exceedingly large scale that had rooted in Poland since the historic turn of 1989. The above refers both to the notions already expressed in the constitutional amendments adopted between 1989 and 1996, and to the ones though formally uninstitutionalised, yet almost universally accepted. The tarse

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* Provisions quoted in this article without any further explanation refer to the Constitution of the Republic of Poland of April 2, 1997.

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[1] Cf. e.g. P. W i n c z o r e k: "Nowa Konstytucja Rzeczypospolitej Polskiej. Problem aksjologii" [The New Constitution of the Republic of Poland. Problem of Axiology], *Przegląd Sejmowy* 1996, no. 4, p. 9-19, and other writings cited therein.

[2] See S. G e b e t h n e r, statement in the discussion in *Konstytucja RP. Oczekiwania i nadzieje* [The Constitution of the Republic of Poland. Expectations and Hopes], Materials from the Scientific Conference at the Department of Journalism and Political Science of the University of Warsaw, November 14-15, 1996, edited by T. B o d i o and W. J a k u b o w s k i, Warszawa 1997, p. 214.

regulations of the constitutional amendment of 29 December 1989, besides, were much more important for the constitutional changes than the extended regulations of the new Constitution which are rather a continuation of these changes. Therefore, the new Constitution, largely, plays an arranging role and integrates the constitutional notions that have already existed. With reference to the new institutions, on the other hand, it fulfils a codifying role, consolidating in the regulations of the highest legal power the earlier achievements of the constitutional idea, legislation, and jurisdiction. Even though the opinion (actually concerning the draft version of November 1996) that "the constitution introduces nothing new and moreover attempts, unfortunately, to be both constitution and a balance sheet"[3] seems a little exaggerated, one must admit that the completely innovative settlements, which would open new routes to the Polish constitutionalism, are not exceptionally numerous. Nonetheless, what must necessarily be emphasised is the willingness to make use of all major trends of the international, and especially European, constitutionalism that were present throughout the formation process of the Constitution.

It does not seem, however, that the new constitution could bring any major constitutional change in comparison with the situation it originated in. It seems also impossible that the significance of the Constitution - adopted in the period of a relative appeasement in politics, with a considerably wide-spread social approval of its basic notions - could be any different.

The new Constitution surpasses the idea of "a Constitution and a balance sheet in one" in this respect that it declares *expressis verbis* "the principle of constitutionalism",[4] i.e. the principle of direct applicability of all constitutional regulations unless it itself "provides differently" (Article 8 Section 2). This principle, besides, is formulated in the context of another principle that defines the status of the Constitution itself as the "fundamental law of the Republic of Poland (Article 8 Section 1). Previously, the principle of constitutionalism was formulated in the doctrine as well, however due to the lack of its normative articulation, it was omitted in court jurisdiction. The situation in current regulations is contrary, as - apart from the above-mentioned Article 8 - Article 178 Section 1 contains the principle of (direct) subjection of judges to the Constitution. All above might be expected to increase considerably the significance of the basic law in our legal system.[5] Therefore, the Constitution is not only a balance sheet (understood as a synopsis of the past), but also a route laid for the future.

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[3] Ibid., p. 213.

[4] Concerning the principle of constitutionalism compare recent writings by A. P u ł ł a: "Idea konstytucjonalizmu w systemie zasad prawa konstytucyjnego" [Idea of Constitutionalism in the System of Rules of Constitutional Law], *Przegląd, Sejmowy* 1996, no. 5, p. 9-22; and "Zasada konstytucjonalizmu (prolegomena)" [The Rule of Constitutionalism], in: *Przeobrażenia we współczesnym prawie konstytucyjnym,* edited by K. D z i a ł o c h a, Wroclaw 1995, p. 59-65.

[5] About direct applicability of the Constitution in the key area of civil rights wrote recently A. L a b n o - J a b ł o ń s k a in: "Zasada bezpośredniego obowiązywania konstytucyjnych praw i wolności jednostki. Analiza prawnoporównawcza" [The Rule of the Immediate Binding of Constitutional Laws and Freedom of Individuals. Comparative Analysis], in: *Podstawowe prawa jednostki i ich ochrona* [Basic Rights of Individuals and Their Protection], edited by L. W i ś n i e w s k i, Warszawa 1997, p. 64-81.

3. In the new Constitution - if one wanted to characterise it generally - what is brought to the foreground is the building of a state "serving" its residents, and especially, though to a large extent not exclusively, its citizens. The state authority, on the basis of the Constitution, possesses practically no autonomous aims and all its objectives indicated in the Constitution consist either in the direct satisfying of both individual and collective human needs or in the creating of the conditions appropriate for self-satisfying of these needs by everybody interested therein. One of the phrases (defining the community of "all citizens") of the so-called introduction to the Constitution and its first article clearly testify to such attitude. Both of them contain the proclamation of the Polish state as the common good of all its citizens, i.e. such a state that everybody can make use of for their own advantage as well as such a State that, according to its powers, is to an equal extent at everybody's disposal.[6] The above is by no means incompatible with the constitutional obligations of citizens - both of loyalty to the state and of responsibility for the common good (see Article 82). On the contrary, those obligations find their justification only when accompanied by the serving character of the state. On the level of constitutional values this characteristic seems to be the most important and fundamental. Article 1 also contains phrases concerning the "social dialogue" or the obligation of citizens of "solidarity with others".

The acknowledgement of the anthropocentric or perhaps individualistic character of the state sprouted already during the constitutional changes of 1989 and was associated with the rejection of the so-called class awareness of the state, understood as the ruling instrument of a single social class. However, the articulation of the above mentioned character for the first time took place in the new Constitution. It did not evoke any opposition during the work on the text of the Constitution and therefore can be regarded as an element of compromise of great significance. Such a character of the state, nonetheless, is not contrary to the good of the state itself. This would be contradictory to our political tradition which is, after all, particularly supportive of the state and which appreciates the significance of the state in the development of the nation. Therefore, in the introduction to the Constitution, speaking on behalf of the Polish nation and addressing all who apply the constitutional regulations "for the good of the Third Republic", its authors call upon them to act upholding human dignity, rights, and freedoms. The reference to the history of the nation, including the meaningful "numbers" of the Republic ("First" and "Second"), further emphasise Polish tradition of support for the state.

4. A particularly clear articulation of the above-described character of the new Constitution are the regulations concerning the rights and freedoms of an individual - both a citizen and any person remaining in the territory of applicability of this legal act. Solely from the purely formal point of view one's attention is attracted to the fact that

[6] Cf. accurate comments on state as a common good in A. G r z e ś k o w i a k: "Aksjologia projektu Konstytucji RP" [Axiology of the Draft of the Constitution of the Republic of Poland], in: *Ocena projektu Kostytucji RP Komisji Kostytucyjnej Zgromadzenia Narodowego. Materiały z sympozjum. Lublin, 16 XII 1995* [Evaluation of the Constitutional Committee of the National Assembley's Draft of the RP Constitution. Materials from the Symposium], edited by J. K r u k o w s k i, Lublin 1996, p. 24 and following.

many parts of the introduction are concerned with the issue of the rights of an individual. Numerous phrases referring to those rights are present in Chapter One, containing a general characteristic of the state shaped by the Constitution, and in Chapter Two devoted to the systematics of the Constitution.

The introduction to the Constitution regards "the guaranteeing of the rights of the citizens" as one of the main objectives to the pursuit of which the Constitution has been dedicated. It contains also - as it has already been mentioned - a call upon those who will apply this Constitution in the future to act "paying respect to the inherent dignity of the person" and "his or her right to freedom". The obligation to respect this principle, among others, is considered in the introduction as "the unshakeable foundation of the Republic of Poland".

Chapter One among the main objectives of the Polish state proclaimed in Article 5 enumerates "the freedoms and rights of persons and citizens". Furthermore, some of the constitutional principles present in the chapter remain in a direct correspondence to the citizens' rights. The above refers, among others, to the principles of political and social pluralism (Articles 11 and 12), the freedom of the media (Article 14), preserving the ownership rights and the freedom to conduct business (Articles 21 and 22), the obligation to preserve and take care of families (Article 18), the neutrality of the state in the matters concerning religious and philosophical beliefs of citizens as well as the autonomy and the mutual independence of the state and churches (Article 25). We should emphasise once more that what we consider here are constitutional principles and therefore, these rights of an individual must be regarded in the same manner. Certain elements of the said passages are repeated in the next chapter, so there is no doubt about the actual articulation of all these rights in the Constitution.

Chapter Two, devoted exclusively to the status of an individual, his freedoms, rights, and obligations, is one of the longest in the whole Constitution. It is composed of three passages concerning three groups of rights, a passage regarding the formal guarantees of these rights, and an initial passage comprising general principles applied to all specific provisions. The chapter is concluded with a passage stating constitutional obligations of an individual. In compliance with the current trends in international constitutionalism as well as in international protection of human rights, Chapter Two encompasses the majority of the rights of the so-called first (individual and political rights), second (economic and social rights), and third generation (rights associated with the development of contemporary science and technology).

Not only the length of the chapter, but also its clear separation from the rest of the structure of the Constitution testify to the will of its authors to make it a sort of "a charter of citizens' rights". One should also notice the particular formal protection of citizens' rights with a higher level of "rigidity". Any change of any of the regulations in this chapter (this refers as well to the chapters I and XII) might be conditioned - on the basis of a motion of the entities that are allowed to put forward a bill on the change of the Constitution - by its acceptance in an approving referendum (see Article 235 Section 6). This single fact alone proves the importance attached to the issue of the status of an individual.

However, one should remember that regulations concerning this issue are often verbalised assertively and are formulated rather as directions that the state should follow and not as subjective rights of an individual. The limits of specific claims resulting from these regulations are to be settled by means of an Act of Parliament, which refers especially to the so-called social rights. This procedure, however, remains in contradiction with the principle of constitutionalism that is simultaneously being proclaimed.

5. All rights and freedoms are rooted - in accordance with the article opening the analysed chapter - in the inherent (repetition from the introduction) and inalienable (a new element) human dignity which is declared as their source. This is undoubtedly a reference to certain natural laws - also in their Catholic version.[7] Thus, the Constitution declares a basically libertarian status of an individual who cannot be forced to do anything that is not required by the law (see Article 31 Section 2). Fortunately, the phrase "everybody can do, what is not prohibited by the law", which was repeated in the earlier versions of the draft, has been dropped, as it bore a flavour of ethical relativism.

The possibility of introducing - by means of an Act of Parliament - any restrictions on the freedoms and rights is defined most restrictively and supplemented with the requirement of the preservation of their "essence", clearly in complies with the European Convention for the Protection of Human Rights and Fundamental Freedoms (cf. Article 31 Section 3 of the Constitution and among others Article 8 Section 2, Article 9 Section 2, Article 10 Section 2, and Article 11 Section 2 of the Convention), This restrictiveness, however, might evoke doubts concerning its adequacy for some of economic regulations, and especially for the ownership right. Perhaps these rights require certain further restrictions surpassing the ones deseiibed in Aiticle 31 Section 3.

The principle of equity in law is associated with the prohibition of discrimination "for any reason whatsoever" (Article 32), without - controversial, as it proved - enumerating of any of those reasons. Only the necessity to emphasise the equality of rights irrespective of the sex of an individual proved significant enough to have been verbalised in the next article devoted solely to this issue. That article, overgrown and - in the light of the provisions included in the previous one - devoid of any profounder normative content, is a good example of the eagerness for a compromise and partly explains the lengthiness of the new Constitution (such articles are quite numerous). Of the more specific regulations, characterising particular groups of rights of citizens, what attracts one's attention is the peculiar verbalisation of the issue concerning the right to life which postulates "legal protection of the life of every human being", which practically leaves the issue open and subject to the jurisdiction of the Constitutional Tribunal.

Among the social rights, there is a striking absence of the constitutionalisation of the right to work; the freedom to chose profession and a place of work (see Article 65)

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[7] Cf. J. K r u k o w s k i: "Godność człowieka podstawą konstytucyjnego katalogu praw i wolności jednostki" [Human Dignity as the Basis for the Constitutional Catalogue of Rights and Freedoms of Individuals], in: *Podstawowe prawa...*, p. 38 and following.

is only a very imperfect palliative.[8] The protection of work by the Republic of Poland, proclaimed in Article 24 and therefore one of the constitutional principles, does not have any equivalent among the subjective rights of citizens, which is contrary to other analogous situations (cf. e.g. Articles 11 and 12 - Article 58, Article 21 - Article 64, Article 25 - Article 53). The above is a significant flaw of the Constitution, as it seems that even the acknowledgement of the so-called structural unemployment does not necessarily exclude both the subjective right of citizens to apply for work and the obligation of the state help in this matter, which - paradoxically - is described in the concluding part of Article 65 (of which Section 1 deals with the freedom to choose profession and the place of work.[9] After all, had it been constitutionalised, the right to work would not have been less guaranteed than it is the case with the right to protect health or the right to education both of which have been included in the Constitution. Probably, similarly to many other social rights, the analysed right would be subjected to the clause of Article 81 ("the rights specified in Article 65 Sections 4 and 5, Article 66, Article 69, Article 71, and Articles 74-76 may be asserted subject to limitations specified by statute"). It seems also that the acknowledgement of the right to work is the central element of "the social free market economy" that is declared as the basis of the economic system of the Republic of Poland (see Article 20).

6. The Constitution of 2 April 1997 introduces many new and significant notions in the sphere concerning the procedures of protection of the rights of an individual. As it has already been mentioned, this question is dealt with in a separate passage in Chapter Two, which in itself is a good and characteristic legislative manoeuvre. Among the recently introduced guarantees of this kind, the most important seems to be the institution of the constitutional complaint, even though it has been restricted - hopefully only for the time being - to the complaints about normative acts. Another institution worth mentioning is the universal right of a citizen to a trial by court, considered as one of the rights of an individual (see Article 45 Section 1), which naturally includes also the right to a court complaint about administrative decisions. The right to a trial by court is significantly reinforced due to the explicitly articulated prohibition of any exclusion from court procedures by means of legal acts (see Article 77 Section 2), which has its complete verbalisation[10] in the principle of procedure "of at least two instances" (Article 176 Section 1) described in the chapter on courts and tribunals. The restrictions of the right to trial by courts have been reserved in the Constitution itself only as provisional arrangements with a specified deadline and they pertain exclusively to the petty

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[8] Cf. e.g. T. L i s z c z: "Przyszła Kostytucja Rzeczypospolitej Polskiej a prawo pracy" [The Future Constitution of the Republic of Poland vs. Labour Law], in: *Projekt konstytucji. Wartości i prawo* [Draft of the Constitution. Values and Law], *{Annales UMCS, Sectio G—lus,* 1997), vol. XLIV, p. 75-85.

[9] Pointed out by W. N e c i u ń s k i in: "Prawa socjalne w konstytucji - spojrzenie polityka społecznego" [Social Rights in the Constitution - the Outlook of a Social Polititian], in: *Konstytucja RP Oczekiwania...*, p. 204.

[10] Cf. analysis of various aspects of the right to trial by court, in: *Podstawowe prawa...*, passim.

offences courts that operate temporarily and to the postponement of the introduction of two-instance procedure in administrative courts.

To the constitutional novelties among the analysed guarantees belong also: the principle of two instances in all kinds of individual cases (which seems to include the constitutionalisation of the right to appeal), as well as the right to a compensation for any unlawful action of the state. The right to put forward "petitions, motions, and complaints", both individual and on behalf of a community, which has been acknowledged as one of the political rights, might - nonetheless - be included among the analysed guarantees.

Finally, to the guarantees of the rights of an individual belong also all organisational and procedural regulations - both those which have already existed and the ones that have just been introduced - which are the elements of the constitutional principle of state of law. To name but a few, one can mention the institution of Ombudsman, the decisive character of the verdicts of the Constitutional Tribunal, and a two-instance procedure in administrative courts.

7. The subservience of the state authorities towards the needs of the citizens acquires a specific character due to the requirement to apply "the principle social justice" that is included in the very definition of the state provided in the Article 2 of the Constitution. In fact, it is a direct adoption of the definition of the state present in the Polish constitutional law since December 1989. Therefore, it is a particularly clear example of the constitutional continuation. One of the direct consequences of the described character of the Polish state seems to be "the social free market economy", which is declared as the basis of the economic system (Article 20) despite the fact that such phrasing is rather uncommon in contemporary constitutions.

Both phrases quoted above indicate that the state authorities, in their character of subservience towards social needs, should aim at possible equalising of opportunities enjoyed by particular individuals and at the diminishing of negative consequences for certain groups of people, inevitable in all large-scale social processes. Therefore, the state, to a certain extent, should continue to play the intervening role and, to a certain degree, should fulfil the role of a guardian, as it is neither an institution that merely fulfills its duties in a "dispassionate" way ("a watchman's role") nor merely an entity which manages solving all social problems and bears full responsibility for its actions. Because as the introduction to the Constitution states, "the fundamental laws of the state" are based upon "the respect" towards both "freedom" and "justice", which finds its continuation in the realisation of the principles of social justice (Article 2). Finally, one should acknowledge that family farms are an element of the social free market economy and the fact that they are regarded as "the basis of the agricultural system of the State" (Article 23) points to the departure from the purely economic view on economic problems.

The social free market economy, in the light of the Constitution, is based upon three principles: "the freedom of economic activity; private ownership; and solidarity, dialogue, and co-operation between social partners" (Article 20). Referring clearly to the social teaching of the Catholic Church (the above expressions were promoted by the

members of the Constitutional Committee who represented "Solidarity" trade union), the Constitution, however, remains cautious with respect to the creation of institutional solutions. In particular, the authors of the Constitution excluded the notion of the so-called workers' participation, as well as they did not introduce - even despite lengthy discussions in the Constitutional Committee concerning this issue - any extraordinary institutions that would serve to realise the said "dialogue of social partners". What I mean here is the Tripartite Commission for Social and Economic Issues which is concerned mostly with the issue of salaries and wages. The single institutionalising effort with regard to the "social" character of the economy, is the constitutionalisation of the right to bargaining between trade unions and organisations of employers. The social free market economy, nevertheless, is to remain an economy in the full meaning of the term, in which all economic categories retain their real substance. The above is reflected in numerous regulations - especially the ones included in Chapter Ten: "Public Finances". One should particularly emphasize here the provisions that require from the applicants of bills to provide the estimated financial results ensuing from their realisation. The regulations that curb the size of the public debt, also prohibit to expand the budget deficit beyond the level determined in the budget, and forbid to finance the budget deficit with the money borrowed from the central bank. They restrict the presidential right of veto in the case of the budget act. Finally one should note the regulations that introduce the new government's obligation to provide the Sejm every year with the information about the size of the public debt. The provisions concerning the National Bank of Poland constitutionalise the notion of "monetary policy" and embody the efforts to specify the responsibility for the decisions resulting therefrom (the consistency of these efforts does not belong to the issue). The concern about a healthier economy is evident in all the above-mentioned regulations.

8. The second central idea of the Constitution seems to be the notion of rule of law (or in other words of the law-abiding state). The idea includes the willingness to apply the principle of law-abiding state established in December 1989, which denotes both the rejection of ideological state and the wish to continue the changes that enrich the essence of this principle. As far as the rejection of the idea of ideological state is concerned, one should note that the Constitution refers to the principle of social and political pluralism (Articles 11 and 12) which is diametrically opposed to the principle of a leading role of one political formation as well as to the idea of "moral and political unity of the nation". The wish to continue, on the other hand, is reflected in the fact that the phrasing of December 1989 ("democratic state of law, realising the principles of social justice") was adopted directly, i.e. without any changes even though the correctness of the phrase is rather dubious *{Rechtstaat* seems a more proper term). This wish, however, is expressed in the institutions and solutions of the new Constitution that greatly reinforce this principle.

At this point I would like to point to probably the most significant fact,[11] that the Constitution uni vocally advocates rule of law understood in material terms. The Third [11]

[11] About complementary character of the two ideas cf. R. A. T o k a r c z y k: "Sprawiedliwość jako naczelna wartość prawa" [Justice as the Leading Value of Law], in: *Projekt konstytucji...*, p. 166.

Republic is the state applying the principle of social justice (see Article 2), in which a functioning system of norms protecting "the freedoms and rights of persons and citizens" (Article 5) should be observed. It is the state where rights originating from "the inherent and inalienable dignity of the person" (introduction and Article 30) are to be guaranteed "for all time" (introduction), "freedom of the person shall receive legal protection" (Article 31), and "all persons shall be equal before the law" (Article 32). The constitutional idea of the law-abiding state, therefore, does not consist merely in the functioning of a highly developed system of procedural guarantees of rights, but - first of all - in the fact that it is based upon the philosophy of individualism and on the universally acknowledged catalogue of individual's rights.

9. Among the new constitutional solutions that are to secure the further development of the idea of rule of law, to mention but a few, one should start with the systematisation of the sources of law, which directly conditions the effectiveness of the "state of law". To the above issue a separate chapter of the Constitution (Chapter Three) has been devoted - which, though neither new nor indisputable in the Polish constitutional tradition,[12] is worth mentioning as a legislative manoeuvre. Additionally, important references to the construction of this system can be found in Chapter One (Articles 8 and 9). The method employed here consists in separating the description of the sequence of categories of law-making acts (to which the said Chapter Three was supposed to be devoted) from the respective competency clauses that are included in the chapters concerning particular state agencies equipped with the law-making powers. An unexpressed principal assumption of Chapter Three was also the aspiration to create a complete ("closed") system of the sources of law. Both goals, however, have not been fully achieved: i.e. in Chapter Three of the Constitution one can find certain competency clauses and despite all effort put into the work on the text, the attempts to include the description of the law-making acts failed, whereas the idea of completeness was realised only to the extent of the so-called universally prevailing sources of law.

What is particularly worth mentioning is, on the one hand, the inclusion of international agreements (their various categories) in the system of the sources of law, which eliminates an important gap in the so-far-existing regulations, and on the other hand, the introduction of significant provisions concerning the so-called internal regulations. The former endeavour constitutes the concrétisation of the declaration concerning observance of the international law by the Polish state (see Article 9), which, particularly in the case of the international protection of human rights, denotes, in fact, the realisation of the material aspect of the principle of rule of law. The above-mentioned regulation, together with certain provisions of the introduction and the fact that not only the rights of citizens, but of all individuals were recognised, means that Poland is unequivocally opening to international co-operation.[13]

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[12] Such tendencies, also Polish, are evaluated extremely critically by P. H ä b e r l e in: "Źródła prawa w nowych konstytucjach" [Sources of Law in New Constitutions], *Przegląd Sejmowy* 1996, no. 4, p. 58-74

[13] Concerning the issue cf.: L. A n t o n o w i c z: "Projekt Kostytucji Rzeczypospolitej Polskiej ze stanowiska prawa międzynarodowego" [Draft of the Constitution of the Republic of Poland from the

10. The fact that a particular emphasis was put on the material aspect of the principle of rule of law does not mean that the Constitution creates no new procedural and organisational guarantees of this principle. In my opinion, the first important change in this sphere is "the new value" given to the judicial authority, which makes it equal to the other segments of the state authority.[14]

The basic framework of the constitutional institutions operating within this sphere influences directly the protection of citizens' rights. The above-mentioned new value is comprised of the inclusion of "tribunals" into the judicial authority, namely the Constitutional Tribunal and the Tribunal of State (see Article 10). The change in the regulation of the third authority centre introduced by the new Constitution, however, consists not only in a mechanical "adherence" of the said tribunals to the system of courts (previously regulations concerning the two institutions were provided in separate chapters of the constitution), but first of all in the transformation of both the structure of the court system and the functions of the tribunals. In this contexts implications important for the new understanding principle of the rule of law originate from: the authorisation of "all courts" (and not as formerly only of the courts of appeal) to submit questions on points of law to the Constitutional Tribunal; proceedings of at least two instances in all types of courts - including administrative courts; the new powers of the Constitutional Tribunal to decide on the compatibility of international agreements with the Constitution and on the compliance of the Acts of Parliament with the international agreements (ratified on the basis of an earlier authorisation in the form of an act). Moreover, an equally significant impact is made by: the decisive character of all decrees of the Constitutional Tribunal; the authorisation of the Supreme Administrative Court to decide on the legality of the provisions of the local law; the fact that competency conflicts between the constitutional central organs of the state are solved by the Constitutional Tribunal, whereas similar conflicts between the self-government agencies and the local and central agencies of the government administration are judged by administrative courts.

Furthermore, certain significant reforms have been made outside the sphere of the judicial authority. One should mention here the introduction of the above-described principle of the two instances in all kinds of individual procedure (not only court procedure), the constitutionalisation of the obligation of the Ombudsman to submit to the houses of parliament the information about the observance of the individual's rights,

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Viewpoint of International Law], in: *Projekt konstytucji...*, p. 9-23; A. W a s i l k o w s k i: "Prawo międzynarodowe a prawo krajowe w przyszłej Konstytucji RP" [International Law vs. National Law in the Future Constitution of the Republic of Poland] in: *Prawo, źródła prawa i gwarancje jego zgodnos'ci z ustawą zasadniczą w projektach Konstytucji RP* [Law, Sources of Law and the Guarantee of Its Consistence with the Fundamental Law in the Drafts of the RP Constitution], edited by K. D z i a ł o c h a, A. P r e b n e r, Wroclaw 1995; R. S z a f a r z, "Międzynarodowy porządek prawny i jego odbicie w polskim prawie konstytucyjnym" [International Law Order and Its Reflection in the Polish Constitutional Law], in: *Prawo międzynarodowe i wspólnotowe w wewnętrznym porządku prawnym* [International and European Community Law in the Internal Law Order], edited by M. K r u k, Warszawa 1997, p. 19-43.

[14] For more information see P. S a r n e c k i: "Władza sądownicza w Kostytucji RP z dnia 2 kwietnia 1997 r." [Judicial Power in the RP Constitution of April 2, 1997], in: *Rejent* 1997, no. 5, p. 126-144.

and the creation of the institution of the Commisioner for Children's Rights. Additionally, the constitutional provisions prohibiting combining political party membership or trade union affiliation with any office or function as well as forbidding to conduct "any public activity that cannot be reconciled with the dignity" thereof, have increased the independence of the presidents of the Supreme Chamber of Control and the National Bank of Poland, the members of the National Council of Radio Broad-casting and Television, and the Ombudsman. One can regret that the Constitution does not mention certain other guarantees of the rule of law. What I particularly mean here is the lack of regulations concerning the public prosecutor's office that would provide it with a specific independence in investigation and in the submission of indictments. It seems also that, similarly to the Commisioner for Children's Rights, the institution of the Spokesman for the Insured is worth being included in the Constitution. Subject to discussion might also be the disregarding of the Bar - especially in the context of Article 42 Section 2 (the right to the defence in criminal cases).

To conclude without entering into a detailed analysis of either the guarantees of the rule of law - both new and those maintained in force - or the guarantees of the rights of citizens (practically indistinguishable from the former), one must acknowledge that the catalogue of rights present in the new Polish Constitution complies with the conditions, even higher than average, a modern constitution has to meet.

11. The third central constitutional idea influencing the general characteristics of the act of 2 April 1997 is the democratic character of its regulations - not only in formal terms, i.e. consisting of both the proclamation of the principle of nation's sovereignty (see Article 4) and the creation of mechanisms to realise this sovereignty, but also in material terms, i.e. reaching beyond the procedural regulations and including individual and collective political rights of citizens, as well as the constitutional regulation of both the status and the role of the main actors on the political scene (first of all, political parties, but also other entities). The principle of political pluralism, appearing among the provisions of the new Constitution, stands in a particularly clear opposition to the regulations formally in force until December 1989 and codified by the previous constitution of 1976. However, as Article 13 indicates, this pluralism is by no means unlimited - the political organisations that manifested in the past a particularly antidemocratic character are ruled out of the public life and Article 188 Point 4 plays the role of a sanction. On the other hand, the introduction to the Constitution demands from all the participants of the political life to enter "the social dialogue" that is regarded as one of the foundations of the Constitution itself.

The role of the subject of the supreme authority is played by "the Nation", in the political sense, undoubtedly, understood as the community comprising its statehood and entitled either to make direct decisions regarding its own matters or to authorise its representatives to do so (see Article 4 Section 2). To the fact that the "Nation" is understood in political terms testify also the provisions concerning the specific rights of the individuals who do not feel part of the Polish nation in the ethnical meaning of the term (see Articles 27 and 35). The above interpretation is also compatible with the constitutional provisions regulating the specific obligations of the state towards the

Polish nation in terms of ethnicity - namely Article 5: providing the obligation of the state to protect the national heritage, or Article 6: introducing the obligation to secure the availability of the cultural values of the Polish nation. The above assertion is justified because the Polish nation as an ethnic group constitutes the majority of "the Nation" in the political sense, whereas in the case of the residents of nationality other than Polish the role of the subjects acting towards their (ethnic) nations in the way described in Articles 5 and 6 is played by other states. The obligations of the Polish state towards the heritage of other nations exist to the extent interpreted from the awareness of " the need for co-operation with all countries for the good of the Human Family" that is declared in the introduction to the Constitution.

However, this considerably homogenous interpretation is unnecessarily undermined by another passage in the introduction which defines the "Polish Nation" as "all citizens of the Republic of Poland" and treats it as the subject establishing the Constitution of the Republic of Poland. "All citizens of the Republic of Poland" is a legal term - the individuals grouped under this term are defined both in the Constitution (see Article 34) and in Acts of Parliament. The author of these provisions while making decisions concerning citizenship would also decide on the existence of the sovereign. Therefore, the term "Nation" should not be defined in any legal regulations, as it is the basic principle (the foundation) of these regulations. To avoid exploring the issue still further one should only add that the above approach is not contradicted by the fact that in order to participate in the realisation of the supreme authority certain conditions must be met, e.g. the possession of citizenship or the attainment of a certain age. Another discord between the content of Article 4 and the above-mentioned term in the introduction is caused by the unnecessary use of the word "Polish" (the second described passage from the introduction), as it suggests ethnic meaning rather than political one (unless one interprets this word as genitive of the noun "Poland"[15]).

The notion of the nation's supremacy, similarly as the idea of a law-abiding state, reappeared in the constitutional text in December 1989. Like the latter, the former has also been reinforced in the new Constitution. Of highest significance is the very fact of accepting the Constitution in a referendum - to shape the structure of the state by means of a constitutional referendum, undoubtedly, might be regarded as the first and particularly important element of the sovereignty of the nation. From the formal perspective future constitutions do not necessarily have to be introduced in the same manner. However, the above assertion seems true only at first sight, since one should notice that the Constitution regulates exclusively the procedure of its changing and the adoption of future constitutions is not mentioned at all. Simultaneously, it is rather unlikely that its authors should expect it to last forever. If in the process of adoption of the next constitution - hopefully not too soon! - the procedure described in Article 235 of the Act of 2 April 1997 is employed, that is if the constitutional draft is treated as a suggested change of maximal character, then even this method

[15] [Translator's footnote] In the original text of the Constitution "Polish Nation" reads "Naród Polski". The word "Polski" can be understood as either an adjective (Polish) or genitive of a noun (of Poland).

allows for calling a constitutional referendum, as such change would affect also those chapters of the Constitution whose amending might be conditioned by optional constitutional referendum. On the other hand, if one wants to create a separate procedure of adoption of future constitutions, it seems extremely unlikely that the constitutional precedence of 1997 will be disregarded.

The direct exercise of authority by the nation is provided in Article 4 that is why it might be regarded as a framework that characterizes the state defined in the Constitution. The close relationship between the institution of referendum and the legislation is indicated by the separate passage in Chapter Four (Article 125), devoted to the structure and competence of the Sejm and the Senate. In this passage the institution of referendum is treated identically as in the regulations existing so far (both constitutional and provided by Acts of Parliament), therefore it might be considered a typical example of the adoption of old provisions. The referendum described therein is a facultative one and its legal nature (either expression of opinion or provision of law) depends on the proportion of the votes cast to the total number individuals entitled to vote.

The previous experience concerning the functioning of the referendum suggests that no normative act can come into being through its application, in particular the possibility to introduce acts in the rank of an Act of Parliament is not provided. The nation may decide in referendum about certain substantial issues, but to transform them into specific legal acts is the task for the respective state agencies. The above concept, however, is not absolutely clear. Definitely, not all matters "of extraordinary significance for the state" can be subject to a referendum. To such issues belong for example questions within the scope of administration of justice and, in general, decisions concerning individual problems of citizens (or legal entities), disregarding how "extraordinarily" significant for the state they are.

In addition to Article 125 and Article 235 Section 6, considering the referendum (facultative as well) on the change of chapters I, II, and XII of the Constitution, also Article 90 provides the possibility of calling referendum on the authorisation to ratify any international agreement, in which Poland would delegate certain part of its competence of power to any organizations or international agencies. Finally, to make the picture of the analysed institution clear, one has to mention the possibility of calling a referendum on local matters.

Apart from referendum, the new Constitution introduces one more form of direct democracy. The institution of people's initiative, so far unrecognised by constitutional regulations, endows a group of at least 100,000 enfranchised citizens with a right to submit a bill to the Parliament. What is astonishing in this context is the lack of people's initiative in the issue of constitutional changes, as well as the lack of regulations providing special treatment for the *citizens'* bills, as the most common arrangement (in the countries where such institution is functioning) is that the rejection of the draft by the Parliament is necessarily followed by a referendum.

12. As it can be judged from the above, the forms in which the nation can directly exercise its authority are not particularly numerous in the new Constitution. Such re-

straint should be regarded as fully justified due to the quite low expectations concerning this issue on the part of our society. Therefore, the fundamental role in the process of exercising authority is played by representative bodies, to which belong the Sejm, the Senate, the President of the Republic of Poland, and - in the local administrative system - the decision-making organs of the local self-government. In respect to the list of state agencies elected by the nation to exercise on its behalf certain attributes of state supremacy, the Constitution introduces no changes in comparison with the so-far existing regulations. Simultaneously however, it does not exclude the possibility to establish executive agencies of the local self-government by means of public election.

The legal relations between the nation and the elected organs are based upon the notion of representative mandate considered traditional within the constitutional law. Applied most evidently with respect to the members of the houses of Parliament it pertains also to the President chosen in direct elections. Both the Members of Parliament and the Head of the State, bearing no legal obligations towards anybody, decide about the current meaning of such terms as "interests of the State", "the prosperity of the Homeland", and "citizens' good" (phrases from the formula of the parliamentary oath), or "Nation's dignity", "the good of the Homeland", and "the prosperity of citizens" (phrases from the formula of presidential oath), and then are supposed to act respectively. Nevertheless, if the President does not realise the aims enumerated in the oath, insofar as the "subjective expressions" can be objectively judged,[16] the Head of the State might be subject to the indictment of the National Assembly and can be held responsible to the Tribunal of State. A new aspect of this issue is the responsibility the MPs to the same Tribunal - sanctioned with the withdrawal of their mandate - for conducting private business with the use of public property, which in their case is illegal (see Article 107). Obviously - due to the fact that the above-mentioned regulation cannot be interpreted *a contrario* as before any case of eligibility loss results in the withdrawal of the mandate.

The new Constitution does not introduce - in comparison with the provisions of the Act of 17 October 1992 on the Mutual Relations between the Legislative and Executive Authorities of the Republic of Poland and on Local Self-government (hereafter referred to as the "Little Constitution") - almost any changes in the institution of parliamentary privilege. The only fact that seems worth-mentioning in this context is that an MP is entitled to accept being prosecuted in a criminal case, which makes the procedure of setting aside the privilege.

In accordance with the new Constitution the Polish Parliament is composed of two chambers and its bicameral composition is of "functional" character.[17] The superiority of the Sejm over the Senate has been preserved. Similarly as the "Little Constitution", the Act of 2 April 1997 provides neither the possibility of beginning the legislative

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[16] Concerning subjective expressions in constitutional provisions see L. L e s z c z y ń s k i: "Zwroty ocenne w projekcie Konstytucji RP - regulacja zasad ustroju i praw obywatelskich" [Evaluational Phrases in the Draft of the RP Constitution], in: *Ocena projektu...*, p. 57-73.

[17] Antonym of the so-called structural bicameralism. Cf. J. C i e m n i e w s k i: "Sejm i Senat w projekcie Konstytucji RP" [The Sejm and the Senate in the Draft of the RP Constitution], in: *Ocena projektu...*, p. 42.

procedure by the Senate nor any procedures for the two houses to co-ordinate their standpoints, and simultaneously allows the Sejm to reject quite easily (securing an absolute majority) both amendment suggestions and motions on rejection of bill submitted by the Senate.

The controlling functions and, even to a greater extent, the authorisation to employ procedures of political and constitutional responsibility is the prerogative of the Sejm alone. The only instance of the participation of the Senate - as a component of the National Assembly - is the procedure of the indictment of the President, nevertheless, even then the votes of senators constitute a clear minority.

Only the Sejm is authorised to announce referendum, pass decision on presidential veto, and to accept ordinances in the rank of an Act of Parliament that the Head of the State is empowered to introduce in the period of martial law. The Sejm is also the single house of Parliament that within the next two years is entitled to decide on the judgements of the Constitutional Tribunal concerning the unconstitutionality of the bills passed before 17 October 1997. In accordance with the Act of 2 April 1997 the so-far existing inequality of the houses of Parliament, regarding the right to establish other state agencies, remained unchanged. The Sejm preserved its exclusive right to grant investiture to the government and choose its members, to appoint members of the Constitutional Tribunal and the Tribunal of State, as well as the President of the National Bank of Poland. The Senate was furnished only with the right to accept the President of the Supreme Chamber of Control and the Ombudsman.

Additionally, the disparity of the representation of chambers in the National Judiciary Council has been maintained (it was "transferred" from an Act of Parliament of an ordinary rank). As far as the National Council of Radio Broad-casting and Television is concerned, the issue is not regulated in the new Constitution.

On the other hand, certain reinforcement of the position of the Senate took place, which consequently strengthened the principle of bicamerality. The chamber is no longer obliged to indicate the sources of financing in the case of the amendments that would have impact on the budget (see Article 17 Section 3 of the "Little Constitution"), which equalises it in this respect with other participants of the legislative process. A fundamental improvement in the standing of the Senate was caused by the new procedure of making changes in the Constitution - they require unanimous acceptance expressed by both houses in the form of an Act of Parliament, which demands the involvement of the Senate. Similarly, considerable amendments appeared in the passing of bills authorising the ratification of international agreements, on the basis of which a delegation of any competence possessed by state agencies would be delegated to an international organisation. In this respect, the improvement of the position of the Senate was the greatest, as the Constitution requires as much as 2/3 of all votes to pass the bill, which means the requirements are higher than in the case of changing the Constitution. Among the rights to establish various bodies, the Senate acquired the right to appoint members - what is more, the same number as Sejm - of the Monetary Policy Council.

13. The mutual relations between various centres of state authority continue (see Article 1 of the "Little Constitution") to be defined by the principle of separation of

powers provided in Article 10 as one of the main constitutional principles. The phrasing of the Article 1 of the "Little Constitution" was supplemented by the principle "of equilibrium of centres of authority", which means that one of the possible versions of separation of powers was chosen. What is worth noticing in this context is the introduction to the Constitution mentioning "the co-operation of centres of authority" or the securing the "efficiency" of public institutions. The idea of separation of powers, which prevents the concentration of competence and is favourable to the precise specification thereof, is universally acknowledged as an important element of the principle of the state of law.[18] The idea of "equilibrium of centres of authority", meanwhile, (considering the metaphorical assumption that the competence of particular agencies concerning various matters are comparable) prevents the domination of one of the organs and, by means of the so-called checks, creates the mechanism for co-operation between the centres of authority, thus increasing their efficiency. The two ideas, naturally, find their actual regulation only when defined in competency clauses.

14. An important motif of the third central idea of the Constitution, regarding the structure of power, is the explicit declaration of the decentralisation of state authority. Although the controversies present within the Constitutional Committee and the National Assembly itself made it impossible to regulate the issue more concretely in the form of a clear indication to the three-level local division of local administration, the general character of the final text allows for no doubts. First of all, it is evident from the mere fact that the introduction to the Constitution mentions the principle of subsidiarity, and proclaims it to be one of the foundations of "the rights provided in the Constitution", and stresses to its function of "reinforcing the rights of citizens and their communities". The above principle, therefore, should be regarded as an extremely important clue in the interpretation of the analysed issue. Secondly, Article 15 Section 1 in Chapter One of the Constitution, describing the general character of the state, explicitly recognises the decentralisation as one of the basic principles of the organisation of public authority.

The decentralisation of authority is to be realised by the local self-government, however, the declaration that "the Republic of Poland shall be a unitary State" (Article 3) denotes that the self-government cannot evolve in the direction of political territorial autonomy - after all not new in the Polish history (e.g. Silesian autonomy in the interwar period) - not to mention the fédéralisation of the state. Nonetheless, the Constitution declares the delegation of a "substantial part of public duties" to the organs of the local self-government (Article 16 Section 2). The local self-government is supposed to consist of a natural local community, functioning in the areas characterised by the existence of "social economic, and cultural ties" (Article 15 Section 2) as well as by a potential sufficient to undertake public tasks. The role of basic cells of the local self-government is to be played by the units of the lowest level - countries - the third

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[18] Cf. *Komentarz, do Konstytucji Rzeczypospolitej Polskiej* [Comments on the Constitution of the Republic of Poland], edited by L. G a r 1 i c k i, set 1, Warszawa 1995, comments on Article 1 of the "Little Constitution".

element contributing to the decentralisation of authority. The establishing of self-governmental corporations of the higher level, which should be followed by the reduction of the competence of the central authority, is left by the Constitution to be decided by the legislator. To strengthen the position of the self-governmental corporations a separate chapter of the Constitution on the local self-government guarantees them the status of legal entity, the ownership right, the right to the court protection of independence, the statutory indication of income sources, the right to create local government associations and to enter international associations of this kind. The supervisory power of the central authority is limited to the criterion of legality and is subject to judicial control.

15. In so far as the judicial authority is concerned, among all three centres of authority this one was affected by the constitutional reforms probably to the greatest extent - the "Little Constitution" completely disregarded this issue. The principal constitutional change consisted in the inclusion of tribunals aside various types of courts as a part of the judicial authority - a straightforward conclusion based on the title and the initial article of Chapter Eight - which considerably increased both its importance and authority.

The above-mentioned inclusion results not only in the consolidation of the so-far existing competences of both types of organs, but also in a much more significant change, as it was accompanied by a considerable growth of the competence of both courts and tribunals. I researched this issue thoroughly by analysing the guarantees concerning citizens' rights and the guarantees of the idea of rule of law (see p. 12). Merely as a supplement to what has already been written one can add that from the point of view of courts, the increasing of competence consists, first of all, in the introduction of "the right to trial by court" in every individual case (see Article 45 Section 1), which makes the expected range of court activity, regulated by Acts of Parliament, extremely wide. Among other important aspects of this issue one should mention: the constitutionalisation of administrative courts and their organising into a separate section as well as the constitutionalisation of the right of the Supreme Court to decide on the validity of presidential elections and referendum (the right of the Supreme Court to decide on the validity of parliamentary elections was included already in the "Little Constitution"). The function of administrative courts, in compliance with the Act on the Supreme Administrative Court, is "to control the performance of public administration" (Article 184), which gives them a very wide range of possibilities. Additionally, courts of this type are responsible for "the administration of justice" (Article 175 Section 1). The Constitution declares also a judicial protection of the independence of local self-government (see Article 165 Section 2).

Preserving the reference to a specific act concerning the definition of "the competence of law courts" (Article 176 Section 2), apart from traditionally perceived administration of justice the Constitution maintains, *rebus sic stantibus*, the numerous court rights that have existed for a long time and enables their potential increase.

The changes concerning tribunals consist mostly in the expanded competence of the Constitutional Tribunal - its judgements acquired the status of decisiveness and their force is universally prevailing, it was authorised to control the accordance of the

national law with international agreements, and finally the provisional restrictions on its competence were abolished. A newly constitutionalised function of administrative courts (see Article 166 Section 3) and tribunals (in the case of the Constitutional Tribunal - see Article 189) is going to be to pass decisions concerning, as it seems, all possible situations leading to competence conflicts. The analysed changes increased also the competence of the Tribunal of State which was previously regulated (in an extremely general way) by the constitutional provisions of 1982. The new Constitution defines the group of entities subject to constitutional responsibility, however, the inclusion of the members of the Sejm and senators is a novelty.

The act of 2 April 1997 regulates guarantees of the independence of the judiciary in a much broader and more thorough way than the so-far existing provisions. The above refers to both courts and tribunals, but - surprisingly - not uniformly, as the Constitution provides separate regulations concerning judges of common courts of law and administrative courts, separate rules pertaining to the judges of the Constitutional tribunal, and still separate regarding the members of the Tribunal of State. Such a division is due to the organisational specificity of these bodies and, to a certain extent, due to the internal systematics of Chapter Eight, although the issue of independence could have been "thrown out" into the initial part of the chapter. Reiterating the principle of irremovability of judges, the legislator removed the constitutional provision on admissibility of its statutory suspension (cf. Article 60 Section 2 of the provisions remaining in force). Other changes concerning the official status of judges - their ex officio removal, suspension, moving to another seat or to another office or, retiring - became conditioned by the decision of court (its type is not specified in the Constitution).

Correspondingly, the Constitution regulated functions and the structure of the National Judiciary Council which plays the role of a statutory and institutional guarantee of the principles of independence of courts and the judiciary. Previously, while this organ was "rooted" in the constitutional provision (see Article 60 Section 3 of the provisions remaining in force), its role could be only deduced from the context - i.e. its placing within the article on irremovability (so independence) of judges. At this point, by the way, a comment can be made that it is apparently wrong that the National Judiciary Council is constructed to represent only a part of judicial authority, as neither the Constitutional Tribunal nor the Tribunal of State send their representatives to that body. It is probably wrong to assume that in the course of their operation neither tribunal will have any problems with its independence, nevertheless the National Judiciary Council will not be able to challenge the normative acts to the Constitutional Tribunal on the independence of tribunals and their members, although it is authorised to do so when those acts pertain to courts and judges (it is a new element of the competence of the National Judiciary Council).

The immunity of judges of common courts of law, administrative courts, and of the Constitutional Tribunal is regulated by the Act of 2 April 1997 identically, though in separate provisions (see Articles 181, 196, and 200).

Apart from the above-mentioned guarantees that are typical for judicial authority of democratic and liberal states, the new Constitution includes special guarantees, ap-

parently originating from recent negative experiences of our state, which are of great normative and educational significance. These regulations consist - on the one hand - of prohibition imposed on judges to be members of political parties or trade unions, and to conduct any public activity that is not compatible with the analysed principles of independence, and - on the other - of the obligation to secure such working conditions and salaries forjudges that would correspond with their duties and the dignity of their office. Partly, this means constitutionalisation of statutory solutions that had existed before, to a considerable extent, however, these regulations are a complete novelty.

The agencies of "the third authority centre" did not keep all of the powers they enjoyed so far. Among the most significant "losses" one should mention depriving the Constitutional Tribunal of the right to announce a universally prevailing interpretation of legal acts, though it might be partially compensated by the powers of the Supreme Court - also an agency of the judicial authority (apart from that, it is meant to be solving competency conflicts - one of the new elements of the competence of the Constitutional Tribunal[19]). A certain diminution of the activity sphere of this tribunal is also - as one should conclude from the constitutionalisation of the right to submit motions to the Constitutional Tribunal (Article 191) - the cancellation of the right of the Constitutional Tribunal to institute legal proceedings on its own initiative. The Tribunal of State, on the other hand, will not be able to pass decisions in cases concerning constitutional responsibility of executives of central offices (cf. Article 198 Section 1 of the new Constitution and Article 1 Section 1 Point 5 of the Act on the Tribunal of State). From the above one can see that the losses are of not great importance, whereas some of them are conducive to the preserving of the judicial character of these organs.

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The analysis of the text of the Constitution of the Republic of Poland of 2 April 1997 allows for the assertion that the Act is based upon three central ideas subservi ence of the state, rule of law, and democracy. The three leading motifs are interwoven in the whole body of its provisions and in all chapters and passages, being expressed in numerous constitutional principles, of which only some could be examined in this essay (even more impossible was to analyse all constitutional institutions).

The new Constitution came into force on 2 April 1997, that is "on the expiration of the 3-month period following the day of its promulgation" (Article 243). The process of its application has just begun. In its course, various interpretations of constitutional provisions will appear in politics, judicial decisions, and doctrine, which will endow these provisions with a specific sense. Such interpretations, actually, have already started, if we take into consideration numerous conferences that are organised as well as the analysis of subsequent versions of both the constitutional draft and the final text that are published (insofar as it was possible in this article I tried to make use of most of them).

[19] A. Z o l l : "Trybunał Konstytucyjny w świetle projektów Konstytucji RP" [The Constitutional Tribunal in the View of Drafts of the RP Constitution], in: *Ocena projektu*..., p. 120.

Despite much criticism towards the new Constitution (*in statu nascendi* and after its adoption), summing up, one is probably allowed to accede to the thesis expressed about one of the last versions of the draft that it "undoubtedly complies with the standards of the modern European constitutionalism."[20] The above evaluation is equally valid with respect to the final text of the Constitution.

[20] T. M o ł d a w a: "Konstytucja RP a standardy współczesnego konstytucjonalizmu" [The RP Constitution vs. Standards of Contemporary Constitutionalism], in: *Konstytucja RP. Oczekiwania...*, p. 42.