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THE SOURCES OF LAW IN THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2 APRIL 1997

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I. Some Historical Remarks

One of the key notions used in this paper is that of the normative concept of the sources of law within some system. I shall take such a concept to mean by normative concept of the sources of law of any system the set of rules specifying which bodies are empowered to make law, what is the scope of their law-making, and what form of law-making these bodies can assume. Such rules may be formulated by legislators in normative acts (constitution), or may take shape in legal writing and judicial decisions, which supplement the legislation. In recent decades the rules constituting the normative concept of the sources of law in Poland were rather few and far from precise. In criticising that state of affairs, lawyers and legal scholars would often describe the official concept of the sources of law as "open-ended" and "confusing".

The "open-endedness" of the system of the sources of law suggested that the Constitution then in force was not considered to provide an exhaustive list of either the forms of law-making, or of the bodies vested with law-making powers. The actual practice was that both the range of bodies empowered to make law and the forms of normative acts provided for by the Constitution would be extended beyond the constitutional provisions by means of ordinary statutes.

The "confusion" of the system of the sources of law had to do with the fact that the relationships between normative acts were not clear. It was frequently impossible to predict which area would be regulated by which kind of normative acts, there was no clarity as to the scope of exclusive statutory regulation (regulation by statute), and, finally, that there was no clear relationship between of international agreements and national law.

A state of considerable uncertainty with regard to the rules of law-making is characteristic of authoritarian states. The vagueness of the conception of the system of law causes the rules of responsibility for law-making to become obscure, and thus favours an instrumental attitude towards the law and facilitates engaging the law in ad hoc political games. This in turn contributes to keeping citizens subordinate to political authorities, instead of making them subject to clear rules of the law.[*] [1]

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[1] For more on arbitrary law-making see E. K u s t r a: *Polityczne problemy tworzenia prawa* [Political problems in law-making], Toruń 1994, p. 27-53.

The political authorities in authoritarian state are not interested in ordering the system of the sources of law. In particular, such authorities are not interested in specifying clear-cut limits that law-making bodies may not transgress. Finally, such authorities are not interested in the functioning of bodies whose task would be to review the constitutionality of the law-making process.[2]

The Constitution of 22 July 1952, which had been in force in Poland for nearly forty years, regulated matters concerned with the sources of law in a very laconic way, and it was not until the year 1982 that any idea of constitutional judiciary was introduced into it. That situation was conducive to arbitrariness in law-making and it contributed to delaying the process whereby legal science and judicial decisions could help to introduce order into the system of sources of law.[3]

According to the provisions of the 1952 Constitution, the sources of law comprised of the Constitution (and constitutional acts), statutes, decrees with the force of statute (issued by the Council of State [the collective presidency] in between the Sejm sessions), as well as executive acts for the implementation of statutes and decrees with the force of statute: regulations, orders, and executive resolutions [decisions] (the latter, alongside the regulations, issued by the Council of Ministers [the Government]). It was also recognized that sources of law were found among at least some of the "spontaneous" normative acts, i.e. acts issued directly on the basis of provisions specifying the tasks of certain bodies, such as resolutions of the Council of Ministers, issued on the basis of the Constitution, and orders (as well as various instructions and circulars) issued by the Prime Minister, by ministers and other central authorities of the state on the basis of statutes specifying the tasks of there bodies. It is especially important to note the diversity of forms of the normative acts, and the multiplicity of bodies engaged in law-making, especially administrative authorities.

As time went on, a number of changes were introduced into the above-mentioned system of sources of law, based on the 1952 Constitution. First, decrees with the force of statute were eliminated from the catalogue of the sources of law,[4] and then, in the "Little Constitution", i.e. the 1992 constitutional act on mutual relations between the legislative and executive authorities, the list of executive acts was limited to regulations and orders, with the Council of Ministers being vested only with the right to issue regulations. Thus, the list of normative acts was restricted, but no such restrictions were applied to the range of bodies authorized to make law.

Independently of the slight modifications in the system of sources of law made by the legislators, significant changes had begun to appear in the process of law-making as early as in the beginning of the 1980s. Such changes had to do with three facts: the establishment of the Chief Administrative Court and the subjecting of ad-

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[2] S. W r o n k o w s k a: *Gesetzgebung und Gesetzgebunglehre in den osteuropäischen Ländern,* ASRP Beiheft 52, Praktische Vernunft, Gesetzgebung und Rechtswissenschaft, Stuttgart 1993, p. 70-76.

[3] For more on the subject see A. G w i ż d ż, S. W r o n k o w s k a: "Current Problems of Legislation in Poland" in: *Legislation in European Countries* (ed.) U. K a r p e n, Baden-Baden 1996, p. 330-346.

[4] This was connected with the abolishion in 1989 of the Council of State [collective presidency] and the establishment of the office of President of the Republic of Poland.

ministrative decisions to review by an independent court,[5] the introduction of constitutional judiciary,[6] and the establishment of the office of the Commissioner for Citizens' Rights [ombudsman].[7] The activities of those institutions contributed, be it in various degree, to raising and promoting the standards of legal culture, to the formation of ways of protecting the individual against the unconstitutional actions of law-making bodies, and, finally, to the partial ordering of the system of the sources of law. It was thanks to the activities of these institutions that the effects of a "confusion" conception of the sources of law became less painful for the citizens. Thus legal practice began to precede the normative change of out-dated and undemocratic constitutional rules of law-making.

In particular, judicial decisions and legal science helped to work out the relationships between statutes and executive acts, and specify in detail the range of matters that were subject to exclusive statutory regulation, thus making a contribution to the implementation of the principle of the primacy of statutes in the system of sources of law. Another advance in ordering the rules of law-making was made after the principle of a state based on the rule of law [Rechtsstaat] was introduced into the 1952 Constitution.[8]

Yet the changes that could be observed in the practice of law-making were not reflected in the provisions of the Constitution. After the political transformations of the year 1989, Poland implemented a radical reform of whole branches of the law. However, a major reform of the system of sources of law had to wait until the adoption of a new Constitution.

II. The Basic Objectives and Dilemmas of the Constitutional Reform of the Sources of Law

In spite of the advances in the practice of law-making in Poland, the makers of the new Constitution had little doubt that the system of sources of law should be ordered, and adapted to the demands of a modern, democratic state and to the principle of the separation of powers, and that this ordering should find its place in the Constitution. This conviction was voiced in all the drafts of the constitution, and the weight of the issue was testified to by the fact that the National Assembly's Constitutional Committee set up a special sub-committe on the sources of law.

Such a standpoint had been largely due to the historical experience of the "confusing" system of the sources of law, an abiding fear of the arbitrary law-making interference by administrative authorities and of the role of acts known as instructions,

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[5] This was provided for by the Act on the Chief Administrative Court and on amending the Code of Administrative Procedure Act, adopted on 31 January 1980.

[6] Poland's Constitutional Tribunal was established in 1982, but the Constitutional Tribunal Act was nut adopted until 1985, which was when the Tribunal embarked on its activities.

[7] The office of the Commissioner for Citizens' Rights started activities on the basis of the Act on the National Ombudsman, of 15 July 1987.

[8] The principle of a state based on the rule of law was introduced in the Act on amending the Constitution of the Polish People's Republic, of 29 December 1989.

which frequently had been more effective in shaping the actual activities of state authorities than statutes themselves.

The ordering of the system of the sources of law was guided by two objectives:

(a) to guarantee that citizens would have a secure position in the state, for any arbitratriness in law-making may pose a threat to the citizens' situation;

(b) to ensure the "transparent" and efficient functioning of the legislature, and thus also of the other powers, for a "confusing" system of the sources of law had turned out to be a major obstacle in the efficient functioning of the state.

The tasks formulated above were to be implemented by means of the two complementary courses of action: by the constitutional "closure" of the system of sources of law, and by the introduction of fairly rigorous forms of review of the constitutionality of the enacted law.

One of the first dilemmas that the Constitutional Committee had to solve was whether the constitutional regulation of the sources of law was to be contained in a separate chapter or whether provisions regulating the sources of law should accompany those which regulated the structure and powers of the state authorities (or any other bodies vested with law-making powers). In the history of Polish constitutionalism both solutions had been adopted: the former in the Constitution of 1935, and the latter in the Constitutions of 1921 and 1952.

The Constitutional Committee decided that it would be better for the purpose of ordering the process of law-making if those matters were to be regulated in a separate chapter. Thus, the Constitution contains Chapter Three, entitled "Sources of Law", which - alongside with naming the sources of law (non-exhaustively) by the constitutional provisions (see point III) includes also several fundamental principles of law-making (cf. article 88, para. 1, article 92, para. 2). It may be assumed that introducing such systematics of the constitutional provisions will have a profound impact on the interpretation of those provisions which relate to the sources of law.

Another dilemma faced by the Constitutional Committee was the question of how to understand the law. After much heated debate, it decided not to include in the Constitution provisions expressing the idea that, apart from the law as a system of norms which are the product of human activity, there is some other kind of law - a system of norms of behaviour which are addressed to human beings, but which are independent of human will in their content and binding force (natural law). It was concluded that the Constitution was not the place to solve disputes of the philosophy of law, and it was decided not to settle the question whether natural law was to be the only a model for norms enacted by public authority, or whether the latter norms were to lose their force in the event where they were in conflict with natural law, and finally who would be entitled to make authoritative adjudications on such contradictions and their consequences.

The rules formulated in the Constitution thus relate to law understood as a system of norms which are the prodcut of human activity. However, law made by public authorities may not be made in an arbitrary way. The Constitution points to the values which the legislative authorities are obliged to protect and is quite emphatic in stating

that any law-making authorities, including the legislature, must operate within clear limits which they may not transgress.

Finally, the Constitutional Committee had to make a decision on what sense was to be given to the expression "source of law", and in particular, whether a "source of law" was to be understood as any fact that made law (the enactment of norms, agreement, the development of norms of common law and law-making precedent) or whether it was to refer only to the so-called written sources of law, i.e. enactment and agreement. There is no unequivocal stance on this matter in the Constitution; it does not exclude any of the forms of law-making, but makes only the written sources of law subject to regulation.

The Constitutional Committee also discussed the matter of what position was to be given in the system of sources of law in Poland to the so-called negotiation-based sources of law, i.e. all kind of agreements and understandings of domestic law. The Constitution gives clear priority to law enacted by a unilateral decision of the empowered state authority. Collective labour agreements and other agreements are recognized as source of labour law (article 59, para. 2). On the other hand, the Constitution introduces agreements between the Council of Ministers [the Government] and the representatives of churches and religious organizations other than the Roman Catholic Church, which are to form the basis for statutes regulating the relationships between the Republic of Poland and those churches and religious organizations (article 25, para. 5).

III. The System of Sources of Law in the Constitution; The Kinds of Sources of Law and Their Hierarchy, Bodies Vested with Law-making Powers

1. As it has been pointed out above, the new Constitution of the Republic of Poland regulates the written sources of law: normative acts and agreements. According to a view widely held in Polish legal science only those agreements and normative acts are considered to be sources of law which contain norms that are in principle general (indicating the addresses by naming their features) and abstract in nature (defining repeated behaviour).

2. The Constitution systematizes the sources of law basing on a distinction, well-grounded in Polish jurispudence, between "sources of universally binding law" and "internal acts". This distinction, although controversial in many of its facets, played an important role in attempts of ordering the law-making process in the 1970s and 1980s. It was decided then that only acts with a universally binding force may contain norms addressed to any subject (including citizens, their organizations, economic units, state authorities) and may encroach upon the sphere of individual rights, freedoms and obligations (or, more widely, shape the legal situation of individuals). Because of the fact that what counted as acts with a universally binding force there were only statutes and executive (implementing) acts issued on the basis of those statutes, or in other words, acts that were issued according to a relatively precise procedure and which had to be promulgated, the conception of acts with a universally binding force protected the

citizens against arbitrary, spontaneous and frequently unpublished law-making by administrative bodies. As for normative acts of an internal character, it was decided that they could be issued on the basis of a statute specifying the structure and tasks of a given body (and not on the basis of special authorization granted by statute), but that their binding force was to be restricted only to the organizational units subordinate to the authority which was issuing the acts.

2.1. In the light of the Constitution, sources of law with a universally binding force in the Republic of Poland comprise of: the Constitution, statutes, ratified international agreements, and regulations (article 87, para. 1). Among normative acts with a universally binding force there are also regulations with the force of a statute issued by the President of the Republic (article 234, para. 2) on a motion of the Council of Ministers [the Government] during a period of martial law, in the event when the Sejm cannot convene in session and exclusively within the limits defined in article 228, paras. 3-5 of the Constitution. The regulations in question need to be approved by the Sejm at its next session (article 234, para. 1). The constitution-makers have not taken an unequivocal stand on what is the legal character of collective labour agreements. The Constitution guarantees the right of trade unions and of employers and their organizations to make collective labour agreements and "other agreements" (article 59, para. 2), but it does not expressly count collective labour agreements among the sources of law. In Polish labour law literature, however, it has been decided, after many years of disputes, to treat collective agreements as a source of universally binding law of a special kind. Thus, it may be expected that interpretations of the rather imprecise constitutional provisions will follow that approach.

The Constitution also provides for sources of universally binding law of territorially restricted scope, i.e. normative acts with force binding only in the area of activity of the bodies that enacted them (e.g. in a province or commune). These are acts adopted by local government authorities (e.g the Commune Council) and by local organs of government administration (e.g. by voivodes [governors of provinces]), on the basis and within the limits of delegation contained in statutes - such acts are described by the Constitution as constituting "local law".

2.2. The matter of internal acts is less clear in the Constitution. The constitution-makers have included among such acts resolutions and orders (article 93, para 1), with the qualification - notwithstanding the unequivocal stand on that matter taken in legal science and judicial decision-making - that they are binding only for the organizational units subordinate to the body issuing a given kind of act (article 93, para. 1) and that they are subject to scrutiny for their conformity with the universally binding law (article 93, para 3).

Whereas orders may be issued only on the basis of statute and may not constitute the basis for decisions concerning the citizens, there are no such conditions with regard to resolutions. Hence, it must be assumed that the Constitution provides for two, fundamentally distinct types of internal acts.

2.3. The rules of procedure for the two chambers of the Parliament (the Sejm - article 112, and the Senate - article 124) are also a specific kind of normative acts.

Such rules are issued directly on the basis of the Constitution, and it is also the Constitution that determines the scope of matters that such rules may and should regulate. Among them are such matters as the internal organization of the Chamber and the agenda of its work, the procedures for appointing and for the functioning of the authorities of the Chamber, and the manner in which state authorities discharge their constitutional and statutory duties with regard to the authorities of the legislature. An overview of the matters which are to be dealt with by the rules of procedure for the two chambers suggests that they will contain - apart from internal provisions - also provisions of a universally binding force.

3. Article 8, para. 1 of the Constitution states as follows: " The Constitution is the supreme law of the Republic of Poland"; all other legal norms binding in the state must be in compliance with the Constitution (article 188) and the Constitution's provisions may be amended only according to a special, relatively complicated procedure (article 235). It is interesting to note that the Constitution does not mention, as a source of law, any constitutional acts, in spite of the fact that in Poland there has been a tendency to enact such laws.

In the hierarchically ordered system of sources of law, the place immediately following that of the Constitution is taken by statutes and ratified international agreements.

The Constitution does not differentiate between statutes , although in the course of its drafting there appeared suggestions to distinguisn special kind of so-called "organic" (cardinal, systemic) statutes. The Constitution does, however, make some changes to legislative procedure, and perhaps the most significant of such changes concerns the legislative initiative whereby a group of 100,000 citizens eligible to vote has the right to introduce a bill in the Sejm (article 118, para. 2)

The constitution-makers have not tried to provide a definition of a statute, on the correct assumption that there is a generally accepted notion of statute in Polish legal culture. The features of a statute undisputably include the fact that it is a normative act which complies with the Constitution, an act adopted by the parliament in a special procedure whose main features are regulated by the Constitution and moreover it is an act whose scope of regulation is in principle unlimited.

The Constitution does not define the scope of matters which can be regulated exclusively by means of a statute (i.e. areas of exclusive statutory regulation). Defining the scope of matters subject to statutory regulation has an enormous public and political role when the executive can make universally binding law "spontaneously", as it was the case in Poland when the 1952 Constitution was in force. Such a definition is not, however, necessary when constitution provide for the executive to issue universally binding normative acts only on the basis of authorization by statute (as is the case in the present Constitution). It is another matter, however, that regulation of many areas is delegated by the present Constitution to statutes. This is especially the case where the Constitution provides for mandative statutory regulation of specific matters (e.g. article 88, para. 2) or where it empowers the statute to modify a constitutional norm (e.g. article 57).

Thus, in saying that the scope of matters to be regulated by statute is unlimited, note must be taken of two essential although quite evident things. Firstly, statutory regulation

does not cover those matters which the Constitution delegated to other bodies, especially executive and judicial authorities. Secondly, a statute must comply with the Constitution, which defines the clear and unbreachable limits of the legislative power.

Polish constitution-makers have quite resolutely opted for the consolidation of the oposition of the parliament and of the statute. That is why regulations with the force of a statute, which are provided for by the Constitution, are acts of an exceptional character, issued (as mentioned above) only under extraordinary circumstances and regulated in a separate chapter (Chapter 11, "Extraordinary measures").

The current Constitution devotes a great deal of attention to international agreements. After years of silence on that matter, the constitution-makers have decided to resolve many controversial issues related to the binding force of those agreements in domestic law and their place in the hierarchy of the sources of law.

The Constitution expressly distingushes three types of international agreements: (a) agreements ratified on the basis of prior consent granted by statute (article 88, para. 3 and article 89, para 1); (b) agreements according to which the Republic of Poland may delegate competences of public authorities on certain matters to international organizations and international institutions (article 90); with regard to those agreements the Constitution provides that granting consent for their ratification requires the form of a statute, and even provides for the possibility of holding a national referendum on that matter (article 90, paras. 2 and 3), (c) agreements ratified without the requirement to obtain consent granted by statute (article 89, para. 2).

Ratified international agreements, once they are promulgated in the Journal of Laws of the Republic of Poland, become an integral part of the domestic legal order and are applied directly (article 91, para. 1).

The place of an international agreement in the hierarchy of the sources of law depends on the procedure according to which it was ratified. Agreements ratified on the basis of consent granted by statute have priority over statutes if the agreement cannot be reconciled with the provisions of such statutes (article 91, para. 2, and also article 188 para. 2). The Constitution also defines the position of law enacted by an international organization - if an agreement establishing an international organization provides so, the law enacted by such an agreement is applied directly and has precedence in the event of conflict with statutes (article 91, para. 3). The interpretation of that provision is likely to cause a lot of problems. As it stands, the provision would suggest that if there is a conflict between statutes, on the one hand, and law enacted by international organizations, on the other, priority is to be given to the latter, irrespective of whether it is a law with a universally binding force or not. No such doubts emerge in case where a statute is in conflict with an agreement ratified with prior consent granted by statute, for agreements which ratification requires such consent contain universally binding norms (article 89, para. 1).[9] Doubts may arise, however, regarding the position within the system of sources of law of agreements whose ratifi-

[9] Thus, a universally binding norm contained in an agreement has precedence over a universally binding norm contained in a statute.

cation does not require statutory consent, as the constitution-makers have not taken a stand on that matter.

The constitution makes no mention of international agreements (to which the Republic of Poland is a party) other than those ratified, which may lead to the conclusion that such agreements are not universally binding law in Poland. The Constitution also lacks any explicit standpoint on sources of international law other than agreements, being restricted to the general provision that "The Republic of Poland shall respect international law binding upon it" (article 9), which leads one to assume that the Republic of Poland also complies with international customs and principles of international law.

The least important position among sources of law with a universally force binding in the whole of the state is occupied by regulations. According to the Constitution, they are the only kind of executive (implementing) acts, and as executive acts they are linked with statutes in two ways: by relating to competences and by relating to functions.

The Constitution defines regulations in a very restrictive way, as acts issued on the basis of a specific authorization formulated in a statute, for the purpose of implementing the statutes, and the powers to issue such acts are vested exclusively with bodies specified in the Constitution (article 92, para. l, sentence 1). The Constitution vests the right to issue regulations with the President of the Republic (article 142, para. 1), the Council of Ministers [the Government] (article 148, point 3), the Prime Minister, ministers in charge of a government department (article 149, para.2), and also the National Council of Radio Broadcasting and Television (article 213, para. 2). The Constitution also requires the statutory provisions on the basis of which regulations are issued to indicate the scope of matters to be delegated to regulations and to contain guidelines concerning the content of future regulations (article 92, para 1, sentence 2). The Constitution also precludes the possibility of delegating law-making powers by means of regulations (ban on sub-delegation, article 92, para.2), thus settling a long-lasting dispute on this point.

A final source of universally binding law is constituted by acts of local law. The right to issue such acts is vested with the authorities of local government, which are guaranteed autonomy by the Constitution (article 16, para. 2, article 165), and by local bodies of government adminstration (e.g. voivodes [provincial governors] as representatives of the government in the provinces, article 152, para. 1). The Constitution does not provide an exhaustive list of bodies which have powers to issue acts of local law, nor does it define the form of such acts. The only requirement that Constitution makes with regard to such acts is that they should be issued on the basis of and within the limits of delegation contained in statutes; however, unlike in the case of regulations, it does not require such acts to be issued with purpose of implementing a statute. All other matters concerning local law are delegated by the Constitution to statutes.

In ordering the system of universally binding law, the constitution-makers have also resolved one highly embarrassing matter. It occurred that both the 1952 Constitution, as well as the "Little Constitution", allowed unpromulgated normative acts, including those with a universality binding force, to figure in the system of law in Po-

land. The new Constitution dispenses with that practice, making the promulgation of statutes, regulations, and acts of local law, a necessary condition for such acts to come into force (article 88, para. 1), and requiring that the mode of promulgation should be regulated by statute. The same requirement could apply, in spite of there being no unequivocal provisions on the matter in the Constitution, to international agreements ratified with prior consent granted by statute.

The second group of normative acts in a dualistic system of sources of law in Poland is comprised of internal acts. Their constitutional regulation gives rise to number of doubts. As it has been mentioned above, there are only two kinds of such acts mentioned in the chapter "Sources of Law" in the Constitution: resolutions, which can be issued by the Council of Ministers [the Government], and orders. The right to issue orders is formulated explicitly in article 93, para.l, of the Constitution, where it is vested with the Prime Minister and ministers, as well as by article 142, para. 1, which vests the right also with the President of the Republic.

The Constitution also makes a distinction between the legal bases for issuing, respectively, orders and resolutions. Orders may be issued only on the basis of a statute. The issuing of orders, however, does not require statutory authorization, for they are not executive (implementing) acts and as such, according to the Constitution, they may not serve as a basis for decisions relating to citizens, legal persons, and other legal subjects.

In relation to resolutions, the Constitution does not formulate any such requirements. It seems reasonable to assume that the Government may issue them both on the basis of the Constitution (e.g. by repealing a regulation or order issued by a minister, article 149, para.2) and on the basis of statutes.

IV. Areas of Controversy

One of the main ideas of the new Constitution was that the system of sources of law should be "closed", both with respect to what form normative acts could take, and with respect to which bodies should be vested with law-making powers. The constitution-makers have been quite successful in achieving that goal, although there are already many matters that give rise to doubts and even serious differences of opinion. This section will look at some of those matters.

Firstly, the Constitution provides for a rather limited list of sources of law. What is especially disquieting is the lack among the normative acts of all kinds of charters, and this in spite of the fact that Constitution provides for a much wider scope and role of self-governmental institutions, which are to enjoy substantial autonomy, also with respect to regulating their structure and functioning.

The radical narrowing down of the range of bodies authorized to issue regulations also may give rise to organizational and legislative problems. The change introduced by the new Constitution is troublesome; many bodies which previously had the right to issue regulations now have to approach the Council of Ministers [Government] , the Prime Minister or the respective minister, with requests for such regulations to be issued.

Many difficulties are also involved in interpreting the provisions on formulating authorization to issue regulations. The authorization provisions are to give a detailed description of the scope of matters to be regulated and are to contain guidelines on the content of the future regulations. There is now debate on how very detailed such guidelines are to be and on whether they have to be explicitly formulated in the authorizing provisions or whether it would be sufficient if they were expressed in various fragments of the enabling statute.

The area where there is the greatest number of doubts and controversies relates to the constitutional provisions on internal acts, and more precisely to the limited range of bodies authorized to issue them. The view that is now starting to prevail among legal scholars is that the Constitution has not closed the catalogue of public authorities entitled to issue provisions of internal law and that such provisions may be issued, apart from the bodies expressly mentioned in the Constitution, by at least the central organs of state authority. This is a view with has a praxiological justification. It would be diffcult, however, to accept that the argument in favour of such a view is provided by article 188, para. 3, which empowers the Constitutional Tribunal to investigate the conformity of legal provisions issued by the **central organs of the state** (underlining by S.W.) with the Constitution , international agreements, and statutes.

V. Recapitulation

The new Constitution of the Republic of Poland has made a profound and wide-ranging reform of the system of sources of law, and, looking from a broad perspective, of the whole process of law-making. The inspiration for the reform was provided by the negative experience of the "open-ended" system of the sources of law, which led to a situation where law-making powers were all too readily transferred by statute to an ever increasing number of bodies, thus undermining the hierarchical structure of the system of law.

It is the first time that Polish constitution-makers have devoted so much attention to the process of law-making, forms of law and review of its constitutionality, and have given so much prominence to the problems of law-making in relation to the totality of constitutional principles. They have thus expressed their conviction that the rules of law-making and the quality of law are a foundation of a democratic state. The role that they have given to the Constitution in the system of sources of law has been changed considerably as well: the Constitution now forms the basis for the law-making process. It defines the system of law-making in the state and also provides the basic frame of reference for the content of the law. The constitution-makers have also strengthened the position of statutes, these being laws adopted by a democratically elected parliament. By contrast, the law-making role of the executive has been considerably restricted - regulations, which are now the only kind of executive act, have been linked to statutes; also the role of internal law-making has been significantly reduced. The con-

stitution-makers have also failed to take advantage of unconventional forms of law--making, especially those that relate to negotiation.

It is still too early to give a well-grounded evaluation of the changes that have been introduced. There are welcome changes relating to the democratization and the ordering of the process of law-making process, but the radical reduction in the range of forms of law-making by administrative bodies gives rise to some skepticism, and the lack of unequivocality of the provisions on the sources of law must be viewed with some concern, as these have already been the source of disputes. Resolving such disputes is bound to take some time, and will require contribution from both legal science and judicial decision-making.