

## **THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2 APRIL 1997 - THE COURSE OF PARLIAMENTARY WORK FROM 1995-1997**

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### **Introduction**

Between 1989 and 1991 and from 1991 to 1993, there were two unsuccessful attempts to pass a new constitution based on democratic standards. Constitutional work has been undertaken for the third time after parliamentary elections conducted in September 1993 ended successfully for the Democratic Left Alliance and the Polish Peasant Party.

In April 1994, the Constitutional Act of 1992 was amended, defining the procedure for work on a new Constitution. The amendment created the ability to initiate a constitutional draft by a group of at least 500 citizens (citizen draft).

In September 1994 the National Assembly held the first reading of seven drafts of the Constitution. These were drafts prepared by: The Constitutional Committee of the 1st term Senate, jointly by the Polish Peasant Party and Union of Labour, Confederation for Independent Poland, Union of Freedom, Democratic Left Alliance, President Wałęsa and a draft prepared by the Independent Self-Governing Trade Union "Solidarity" supported by signatures of almost one million citizens (citizen draft).

They were all sent to the Constitutional Commission as a basis to prepare a uniform draft. After initial work of six permanent subcommittees set up by the Constitutional Committee, at the turn of 1995 the first - working - uniform version was drafted. Starting in January 1995 the Constitutional Committee began systematic work to review this draft. The "technology" of the Committee's work was based on reviewing successive articles of the draft at successive sessions. The effect of discussions were motions containing amendments to a discussed article or even completely new interpretation of a discussed article. These motions were submitted to voting at the next session (most of the Committee sessions were two-day sessions). The contents of successive articles were established from the voting results.

Working in this manner the Committee completed the review of the initial January 1995 draft on 19 June 1996.\*<sup>1</sup>

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<sup>1</sup> More on course of the works over the Constitution in the years 1989-1995, and in particular in the years 1993-1995 - see *Polish Contemporary Law* 1995, No 1-4, p. 105 and subsequent pages. Texts of the

### **Primary Constitutional Problems Discussed at the Constitutional Commission During Work Over Particular Sections of the Constitution's Draft (26 January 1995 -19 June 1996)**

The Committee prepared the wording of articles making up a chapter concerning primary principles of the constitutional system in the period from January to April 1995.<sup>2</sup> This relatively long time for preparation in large part resulted from moving the voting deadline ahead several times in order to reach a compromise over provisions concerning relations between the state and the church.

During work over the initial articles of the draft particularly extensive discussion concerned questions such as the concept "common good", "balanced development", "social justice". This was also true for provisions concerning the supreme power, political parties, law and order, separation of powers, constitutional precedence. A proposal to add a provision that the Republic of Poland shall adhere to international law that binds it was positively accepted.

Furthermore, a wider debate concerned the provisions dealing with local and other forms of self-government, ownership, freedom of economic activity, labour as well as civil society.

Parallel to work over the first chapter, containing a catalog of supreme principles of the constitutional system, between February and April<sup>3</sup> the Committee took up provisions contained in the second chapter, concerning citizens' freedoms, rights and duties applicable to humans and citizens.

The widest debate concerned provisions related to dignity, freedom, equality, citizenship, non-prescription of war crimes and crimes against humanity, suspending prescription in relation to crimes not prosecuted due to political causes, the right to trial.

In discussion over an article defining limitations to freedoms and rights in the event of implementation of martial law or a state of emergency, a postulate was accepted to cover the problems of conditions for implementing states of emergency in a separate chapter.

The very lively exchange of views lead to a provision wherein a person of Polish nationality can return to Poland and settle permanently.

Extensive discussion surrounded the article regulating freedom of conscience and religion, especially over the right to maintain silence in matters of religion and faith. This also refers to the provision wherein education should consider the will and maturity of a child as well as the freedom of his conscience and religion.

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draft of the Constitution being subject to the first reading before the National Assembly, as well as the working drafts of January 1995 and the draft of 19 of June 1996 - see *Constitution Drafts 1993-1997*, Part 1, Wydawnictwo Sejmowe, Warszawa 1997. More on the course of works on the New Constitution - see R. Chrusciak: *Przygotowanie Konstytucji RP z dnia 2 kwietnia 1997 r. - przebieg prac parlamentarnych* [Making of the Constitution of the Republic of Poland of 2<sup>nd</sup> April 1997 - Course of Parliamentary Works], WDiNP i IW Warszawa 1997

<sup>2</sup> Full discussion - see Constitutional Commission of the National Assembly Bulletin (hereinafter "the Bulletin") XII-XVII.

<sup>3</sup> Bulletins XIV-XVII.

Concerning social rights, the greatest attention was devoted to the right to work, to education, to the protection of health and protection of the family and child.

As a result of the discussion, the catalog of factors preventing discrimination was drafted and expanded to include sexual orientation. An article on the equality of women and men was also added.

In the framework of debate over resources to protect freedoms and rights, considerable discussion ensued by the constitutional complaint provision as well a provision wherein certain social rights could be vindicated only within limits defined by the law. Thus, these rights cannot be enforced directly on the basis of the constitution.

In April and May 1995 the Committee worked on articles regulating the Sejm and Senate.<sup>4</sup>

Concerning the issue of the term of office, a proposal to introduce a separate four year term in the Senate was not accepted. Similarly, the proposal to introduce the institution of a substitute parliamentarian did not gain support. On the other hand, the postulate to accept a provision permitting a parliamentarian to agree to his criminal prosecution (repeal of immunity) has been approved.

Furthermore, an extensive catalog of positions or functions was accepted, which cannot be combined with a parliamentary mandate.

Concerning legislative procedure, the majority of the Committee agreed that subjects undertaking legislative initiative have to present information on the financial consequences that a submitted legislative draft would lead to.

The concept of urgent drafting of legislation did not lead to any controversy. To the contrary, the proposal to grant the Council of Ministers the right to issue decrees with the force of a legal act was rejected.

From the end of May until the middle of June the Commission reviewed the chapter on the Presidency of the Republic of Poland.<sup>5</sup> Several extensive concepts for the institution of the presidency were presented in the discussion. As to detailed issues, the following questions led to a wider exchange of views: defining the president as a guarantor of the continuity of power, presidential election procedure, supremacy over the armed forces, justification to create a Cabinet Council.

From mid - June until the beginning of July 1995 the Committee reviewed provisions controlling the Council of Ministers and government administration.<sup>6</sup> In part, the discussion concentrated around: supposed competencies, the aim of the legal act on the Council of Ministers, catalog of normative acts of the government, composition of the government and competence of the Prime Minister. Furthermore, the procedural question of creating a government and vote of no confidence were extensively discussed.

The Committee worked on provisions concerning a system of sources of law in July and August.<sup>7</sup> The system of the sources of law was the key issue here. Opinions

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<sup>4</sup> Bulletins XVIII-XX.

<sup>5</sup> Bulletins XX and XXI.

<sup>6</sup> Bulletins XXI and

<sup>7</sup> Bulletins XXII and

dominated that this should be a closed system. Furthermore, a wide debate concerned organic acts and procedures to ratify international agreements.

Articles dealing with problems of courts and tribunals were reviewed by the Commission from the end of August to the beginning of October.<sup>8</sup> The discussion centered on questions related to the separateness of courts, court structure, status of judges, political position of the Supreme Court, two instance nature of jurisdiction. A proposal to grant courts budgetary autonomy led to a heated discussion.

Relative to the Constitutional Tribunal, extensive debate was conducted on the issue of adjudication in matters to assess the constitutionality of international agreements. A representative of the Constitutional Tribunal moved to expand the Tribunal's authority to resolve disputes between constitutional organs of the state. A compromise formula providing for final character of Tribunal decisions was also accepted. The question of universally binding interpretation of legal acts was also taken up.

The problems of state control organs and protection of law was the subject of Committee work between September and October.<sup>9</sup> In relation to the Supreme Chamber of Control, the Ombudsman and the National Radio and Television Council, the proposed constitutional provisions were based on binding regulations.

Despite a different view by government representatives, the Committee acknowledged that regulation of the office of public prosecutor is not necessary in the constitution. The proposal to include the National Election Commission in the constitution was also not accepted.

The Committee debated over local and other self government provisions in the period from mid-October 1995 to the end of February 1996.<sup>10</sup> The draft of the article defining the scope of local government authority as well as articles concerning the organizational levels of local government led to heavy debate. The existence of communities, administrative districts and voivodships was accepted.

In addition, one of the most lively discussions centered on financing local government.

In the period from the end of January to mid-May 1996 the Committee worked on provisions concerning the nation's budget and finances.<sup>11</sup> The most attention was drawn to obtaining public resources, the question of public debt, taxes, and procedure to pass the budget. Proposals providing for the setup of a general prosecutor to protect the interests of the National Treasury as well as a tripartite commission composed of employees', employers' and government representatives were rejected.

The next problem undertaken by the Committee - between February and June - concerned state of emergency.<sup>12</sup> The most discussed question was the catalog of freedoms and rights which could be limited during a state of emergency. The issue of how many and what kinds of states of emergency the constitution should permit was also disputed.

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<sup>8</sup> Bulletins XXIII-XXVI.

<sup>9</sup> Bulletins XXV and XXVI.

<sup>10</sup> Bulletins XXVII-XXX.

<sup>11</sup> Bulletins XXIX-XXXIV.

<sup>12</sup> Bulletins XXIX-XXX and XXXIII-XXXIV and XXXVI.

In the period between May and June<sup>13</sup> the Committee reviewed a proposal to include a new chapter to the draft concerning national defense and the armed forces. The Committee was especially critical of the proposed provision, according to which the President of the Republic of Poland manages the internal and external security of the nation. The dominant view was that this infringes the political position and authority of the government as an organ managing the nation's defense policy.

In the end a new chapter was not introduced, but the draft was supplemented in part wherein the neutrality of the armed services and their being subject to civil and democratic control was provided for.

At the end of May and in the beginning of June<sup>14</sup> the Committee also worked on provisions for procedures to change the constitution. The subject was whether the National Assembly (the Sejm and Senate together) or the Sejm and Senate deliberating separately should pass changes to the constitution, as well as the question of applying a referendum as a procedural element to change the constitution.

In mid-June<sup>15</sup> the Committee accepted the introduction and final provisions. It was then decided that final provisions will be included in the constitution, while interim provisions in a separate constitutional legal act.

### **Initiative to Hold an Initial Constitutional Referendum (27 September 1995 - 21 June 1996)**

In the course of a Committee session in September 1995 in the name of a group of MPs from the Union of Labour Ryszard Bugaj presented an initiative to hold an initial constitutional referendum, in which voters would respond to issues such as the structure of parliament, majority needed to reject a presidential veto, ideological neutrality of organs of public power, the manner of financing the health service, structure of local self government.

After discussion the Committee decided to set up a subcommittee which would analyze arguments in favor and against a referendum.<sup>16</sup>

In a report submitted at the beginning of December, the subcommittee came out in favor of holding a referendum. On 20 December the Committee decided to move the National Assembly to pass a resolution in the matter of holding an initial constitutional referendum. It was then decided that the Committee would be limited to problems which should be the subject of inquiry and not specific inquiries. In successive voting it was determined that the inquiries should concern: parliamentary structure, local self-government structure, presidential election procedure and State-Church relations.

The National Assembly debated the Committee motion to conduct a constitutional referendum on 19 January 1996. The rules of proceedings of the National Assembly

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<sup>13</sup> Bulletins XXXV and XXXVI.

<sup>14</sup> Bulletins XXXV and XXXVII

<sup>15</sup> Bulletins XXXVII.

<sup>16</sup> Bulletins XXV p. 90 and subsequent

were amended in 1994 and established the procedure for work on the constitution. The amendment concerned the procedure for passing resolutions to hold a referendum. However, material discussion on the referendum question was never conducted. On the other hand a motion to hold a break in the session to “create proper conditions for a calm, rational discussion (...)”<sup>17</sup> was raised and accepted.

Renewal of the National Assembly debate only took place on 21 June 1996. One of the viewpoints raised was that an initial constitutional referendum has no justification, since on 19 June 1996 the Constitutional Committee completed primary work over the draft constitution.

Voting on the motion to reject the draft resolution in the matter of the initial constitutional referendum was accepted since it obtained support of 222 members of the National Assembly. There were 131 votes against and 18 abstaining.<sup>18</sup>

### **Editorial Work on the Draft Constitution Completed by the Constitutional Commission on 19 June 1996 (June-September 1996)**

The draft which the Committee completed on 19 June 1996 was characterized by the fact that in many cases the acceptance of particular provisions regulating similar material took a lot of months. It also happened that the Committee returned to already accepted provisions and made changes in them.

The draft was supplemented by new provisions. In the course of work some provisions were accepted under the simultaneous presumption that its particular wording will have to be the subject of further work, especially of an editorial and legislative nature.

Taking the above factors into consideration as well as the presumption accepted from the outset of the need to conduct final editorial work, a group of experts was appointed to deal with detailed analysis of the editorial correctness of the draft. A language expert was part of this group.

The material work of the expert group was based on systematic analysis of the entire draft. After ongoing discussion on every article and in the case of more extensive articles, over every passage - conclusions and comments were drawn up taking the form of proposed amendments, additions or changes of another nature.

The scope of the proposed changes and additions submitted by the group of experts was very significant and covered a significant majority of articles from the draft of 19 June 1996. Among others, experts proposed editorial changes to particular provisions, changes to the location of provisions and articles. The scope of proposals intending to unify terminology and concepts was very significant. Errors and inconsistencies were

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<sup>17</sup> Stenographic Report from the 2 seating of the National Assembly of 19 June 1996, Part I, p. 24.

<sup>18</sup> Stenographic Report from the 2 seating of the National Assembly of 19 June 1996, Part II, p. 36.

also indicated. In addition the need to make changes and material additions were also pointed out.

General issues and provisions to be entered into the constitution resulting from the work of the experts were submitted to the editorial subcommittee. The subcommittee approved the clear majority of comments and proposed changes submitted by the expert group. Furthermore, in the course of editorial subcommittee sessions, proposed changes and additions which exceeded the proposals submitted by the group of experts were brought up.

The effect of the subcommittee work was a report containing the draft of the Constitution of the Republic of Poland bearing the date 27 August 1996. This draft - together with auxiliary material illustrating the scope of changes in comparison with became the draft dated 19 June 1996 - became the subject of Constitutional Committee sessions, starting in the middle of September 1996.

### **Work to Prepare the Committee Report Containing the Draft of the Polish Constitution in the Form of a Uniform Text (17 September 1996-16 January 1997)<sup>19</sup>**

On 17 September 1996 the Committee started to review the report of the editorial subcommittee. New editing to most articles was accepted, comprised of chapter I, which was given the title: the "Republic". The proposed changes in the articles concerning State-Church relations caused the greatest disputes. Furthermore, the resolution of the Committee from 1995 was repealed, wherein the constitution will not have a preamble.

The articles comprising chapter II "Human and civic freedoms, rights and duties" were reviewed next. The provision enumerating under which criteria discrimination is prohibited caused considerable debate. One of these criteria was sexual orientation, which was criticized, especially by representatives of the Catholic Church. Finally the Committee decided to delete this specification entirely. Thus, a general prohibition against discrimination remains.

Articles concerning the right to education, right to health care, rights of the family and child as well as resources to protect freedoms and rights were reviewed.

In mid-October a newly edited version of chapter II "Sources of law" was accepted. The problem of a closed or open system of sources of law came up in the discussion again.

Next the Committee reviewed chapter IV "The Sejm and the Senate". The most serious disputes and controversies centered on provisions defining who and how the validity of elections are determined by as well as on provisions concerning parliamentary immunity.

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<sup>19</sup> Bulletins XXXIX-XLII.

Furthermore, an institution of a referendum was introduced. In addition, a change was made according to which repeated passage of a legal act by the Sejm - after the President refuses to sign - requires a  $\frac{2}{3}$  majority, while the earlier form required an absolute majority.

In the course of reviewing chapter V "The President of the Republic of Poland" extensive discussion concerned in part the Cabinet Council, constitutionalization of the Chancellery of the President, legal acts of the President and catalog of acts not requiring countersigning by the government.

Discrepancy of viewpoints and disputes were also disclosed in the course of work over chapter VI on the Council of Ministers and government administration. In part this concerned the following questions: supposed competence of the government, composition of the government, manner of defining the scope of activity of a minister, constructive vote of no confidence. The proposed provision according to which it would be possible to combine the question of confidence for the government with particular piece of legislation was not accepted.

In the course of reviewing the chapter containing provisions concerning local self-government - against the background of the article concerning local councils - this again led to a dispute between proponents and opponents of creating a second level of local self-government - administrative district. The accepted edited version maintained the administrative district.

In the course of editing chapter VIII "Courts and Tribunals" the largest controversies were brought about by the question of universally binding interpretation of legal acts performed by the Constitutional Tribunal. In light of this, a difference of opinion surfaced between the Constitutional Tribunal and the Supreme Court. Ultimately the Committee supported arguments indicating the non-justification of maintaining the universally binding interpretation of legal acts by the Constitutional Tribunal which led to deletion of the article concerning this question.

At the end of November the Committee accepted editorial changes, in part in chapters concerning state control organs and protection of law, public finances, states of emergency, constitutional changes and final provisions.

At the beginning of December 1996, the Committee accepted a preamble based on a modified proposal submitted by MP T. Mazowiecki. This meant the end of reviewing the report of the editorial subcommittee. Thus, a condition arose to hold final voting on the constitution draft. Nonetheless voting was never held, since a group of Committee members - the Polish Peasant Party and the Union of Labour parliamentarians - proposed amendments, claiming that their support for the draft constitution depends on them. In this situation - facing a possible crisis - it was decided that the remaining parliamentary groups also have the right to submit amendments.

The proposed amendments submitted by the parliamentary factions groups became the subject of Committee debate between 14-16 January 1997.<sup>20</sup> In the period preceding the session there were political consultations by the Democratic Left Alliance,

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<sup>20</sup> Bulletins XLIII.



Polish Peasant Party, Union of Freedom and Union of Labour parliamentarians, which resulted in working out a compromise permitting the filing of agreed amendments.

As a result of voting on the draft, among other things the wording on the administrative district as the binding level of local self-government, was exchanged for decentralization of public authority. Chapter I was expanded by an article stating that the family farm is the basis of the nation's agricultural system as well as provisions on the Polish language as the official language.

New wording was added in chapter II concerning policy intending for full, productive employment, access to publicly financed primary health care, policy enhancing that housing needs are met.

The majority necessary to pass a legal act after the president refuses to sign it - was lowered from  $\frac{2}{3}$  to  $\frac{3}{5}$ .

Furthermore, the procedure to create a government was limited to three versions. In addition, a two year period was introduced in which decisions by the Constitutional Tribunal on the constitutionality of legal acts passed before the Constitution takes effect, will not be final.

In other parts of the session Senator P. Andrzejewski presented 19 proposed amendments based on replacement of a certain provision of the draft prepared by the Committee, with a corresponding provision of the citizen draft. In part, the amendments concerned natural law, transferring competencies of public power to an international organization, political parties, State-Church relations, right to life, protection of the family, freedom of conscience and religion, tripartite commission, responsibility of the government., competence of the Supreme Court, procedure for appointing the Constitutional Tribunal as well as interim provisions.

These motions were rejected, though several amendments that resembled the provisions of the citizen draft were accepted. In part this concerned the prohibition against actions by political parties with a totalitarian program, requirement to be faithful to the Republic as well as protection of the family.

The Committee also accepted new interim and final provisions concerning issues such as: the duty of the government to prepare - within 2 years - necessary legislation to adapt the legal order to the constitution and provisions concerning the expiration of constitutional terms for organs of public power.

After completion of work on the draft and hearing statements by representatives of parliamentary groups, final voting on the motion to accept the Committee report on drafts sent by the National Assembly, containing a Constitutional draft in a uniform text has been accomplished. 45 members of the Committee supported the motion, two were opposed and one abstained.

This meant that after more than three years of work, the Constitutional Committee had completed its primary task to prepare a draft of the constitution and submit it to the National Assembly.

### **Passing the Constitution of the Republic of Poland in the Second Reading on 22 March 1997 (24 February - 22 March 1997)**

The passage of the report containing the draft of the Constitution of the Republic of Poland in the form of a uniform text<sup>21</sup> allowed for calling a National Assembly to review the Committee report in the second reading.

The National Assembly started the debate on 24 February.<sup>22</sup> After MP M. Mazurkiewicz gave the Committee report and presented the course of work and primary conflicting problems, MPs had the opportunity to speak.

In general the Democratic Left Alliance, Polish Peasant Party, Union for Freedom and Union of Labour MPs supported the Constitutional draft, while maintaining reservations and critical comments to certain provisions.

Representatives of right wing groups came out against the draft, charging that it was a cutoff from values that make up the legacy of generations, the lack of “*invocatio Dei*,” that it advocated almost unlimited freedom of man, lack of protection of life from conception to natural death, weakness of the constitutional position of the family and ability to transfer certain competencies of public authority to international organizations.

As a representative of adherents of the citizen draft, M. Krzaklewski spoke on 25 February. He alleged that the draft of the Constitutional Commission was a continuation of “the round table” settlements which was expressed in the lack of separation from Polish People’s Republic and animosity towards “*invocatio Dei*” as well as Catholic constitutional postulates. He added that the defect of the draft is its failure to consider certain solutions from the citizen draft: a defined model of the market economy, protection of the family, a majority system in elections to the Sejm, strong position of the Senate, institution of the National Treasury as a separate economic entity.

Furthermore, M. Krzaklewski supported the idea of submitting two drafts to a referendum: the draft of the Constitutional Commission and citizen draft.

After statements by representatives of smaller Senate factions and Parliamentary groups, some 200 individual members of the National Assembly had the opportunity to comment, with 120 making nearly 500 amendments to the draft. The amendments most often concerned the preamble, freedom of religion and State-Church relations, right to education. Several amendments were made to provisions related to the governing public finances, as well as the system of the sources of law, and especially to provisions concerning the relation between internal and international law.

The amendments raised during the second reading between 24-28 February, after being listed and ordered, became the subject of work of the Constitutional Committee, whose task was to accept by voting the recommendations of particular amendments for the National Assembly.

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<sup>21</sup> Printed Document of the National Assembly No 14 and Constitution Drafts 1993-1997, Part II, p. 198.

<sup>22</sup> Stenographic Report from the 3 seating of the National Assembly of 24,25,26,27 and 28 of February 1997, Part I p. 24.

The Committee reviewed amendments raised at the National Assembly between 7-14 March 1997.<sup>23</sup>

A more extensive exchange of views was caused by amendments concerning natural law, the ability to transfer competencies of public organs to international organizations, political parties. Amendments providing for additional provisions defining the basis of the economic system led to a heated discussion. In effect the Committee proposed accepting a compromise amendment wherein the basis of the economic system is a social market economy based on freedom of economic activity, private ownership as well as solidarity, dialogue and cooperation between social partners.

Amendments concerning: health care, employment of juveniles, right to education, citizenship, complaints based on the constitution, international agreements ratified after prior approval expressed in a legal act, prohibition of connecting a parliamentary mandate with performance of other functions, immunity and referenda led to a more extensive debate.

Amendments concerning government decrees with the authority of a legal act, constitutionalization of the office of public prosecutor as well as interpretation of legal acts did not obtain a positive opinion by the Committee.

In addition, amendments concerning the right to life were reviewed. After a long discussion the Committee proposed acceptance of an amendment in the following wording: "Human life is protected by law".

On the last date of working on amendments - 14 March - the Committee reviewed amendments concerning freedom of conscience and religion as well as amendments referring to provisions on state control organs and protection of law, public finances, states of emergency, constitutional changes as well as interim and final provisions. Problems discussed earlier again resurfaced, such as the scope of control by the Supreme Chamber of Control over local self-government, the Ombudsman for the Rights of Children, defining the permissible level of public debt.

There was an extensive debate over amendments concerning interim and final provisions. These especially concerned the question of acknowledging international agreements ratified on the basis of constitutional provisions binding at the time of ratification, for agreements ratified after prior approval expressed in a legal act as well as the question of presenting the Sejm with a list of international agreements containing provisions that are non-conformed to the Constitution.

Finally, amendments concerning the preamble were reviewed. The Committee proposed accepting the proposal of T. Mazowiecki as well as other similar amendments.

As to withdrawing some amendments in an additional report of the Committee<sup>24</sup>, it was proposed that 113 out of 362 amendments should be accepted.

The additional report of the Commission became the subject of debate by the National Assembly on 21 March.<sup>25</sup>

<sup>23</sup> Bulletins XLIV-XLIV

<sup>24</sup> Printed Document of the National Assembly No 14-A and Constitution Drafts 1993-1997 Part II p. 263.

<sup>25</sup> Stenographic Report from the 3 seating of the National Assembly of 21 and 22 of March 1997, Part II.

After MP M. Markiewicz gave a short presentation of the Committee report, voting was initiated. The first two votes concerned the most far reaching motions. These were motions by minorities to accept the draft Constitution of the Constitutional Committee of the 1st term of the Senate and the citizen draft. Both motions were rejected by a clear majority. Then, more than 320 issues were voted upon, since some of the amendments were withdrawn. As a result of the votes, almost 100 amendments and two minority motions were accepted. Five new articles were added, with the accepted changes concerning the preamble and more than seventy articles.<sup>26</sup>

Then on 22 March, voting was held to accept the entire draft of the Constitution of the Republic of Poland in the wording proposed by the Committee together with the accepted amendments.

497 members of the National Assembly participated in the vote. A  $\frac{2}{3}$  majority equated to 332. 461 members of the National Assembly voted to accept the draft in its entirety, 31 members were opposed, with 5 abstaining from voting. This meant that the Polish Constitution was passed in the second reading by the required  $\frac{2}{3}$  majority.<sup>27</sup>

### **Adoption of the Constitution of the Republic of Poland in the Third Reading on 2 April 1997 (23 March - 2 April 1997)**

According to the Constitutional Act on the procedure to prepare and pass the Constitution of the Republic of Poland, the Marshal of the Sejm, as chairman of the National Assembly, sends the Constitution to the President, after its adoption in a second reading, who can propose changes to the text within 60 days.

On 24 March the President A. Kwasniewski sent back his proposed changes, which concerned 41 articles of the Constitution. These changes became the subject of work by the Constitutional Committee on 26 March.<sup>28</sup>

The task of the Committee was to express opinion on the proposed changes in the form of recommendation to accept or reject them by the National Assembly.

In the course of reviewing the proposed Presidential changes, a wide exchange of viewpoints was brought about by the wording concerning the armed forces, State-Church relations, proposal to add a provision wherein freedoms and rights contained in the Constitution should not be interpreted in a manner that limits the human rights set forth in the Universal Declaration of Human Rights and other norms of international law, scope of parliamentary immunity, prohibition of connecting a parliamentary mandate with the performance of other functions, appointments to the highest military positions, appointments to the highest positions in the courts system and to the Constitutional Tribunal, responsibility of the government and members of government as well as limitations in imposing taxes and public levies.

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<sup>26</sup> List of introduced amendments - see: Information, *Przegląd Sejmowy* 3(20)/97 p. 170 and subsequent pages.

<sup>27</sup> See - Constitution Drafts - 1993-1997, Part II, p. 315.

<sup>28</sup> Bulletin XLVI - This was the last meeting of the Commission.

Ultimately, the Commission proposed accepting most of the proposed changes, among which several were contained in the report<sup>29</sup> in the form of authentic amendments raised by the Presidential representatives influenced by arguments presented by members of the Committee.

The Committee report with the Presidential changes was reviewed by the National Assembly in the third reading on 2 April 1997.<sup>30</sup>

As with the second reading, the Democratic Left Alliance, Polish Peasant Party, Union for Freedom and Union of Labour MPs supported the changes proposed by the President to an even larger degree. Representatives of the right wing groups were even more critical.

Among the proposed changes of a greater meaning, proposals referring to the Universal Declaration of Human Rights, introducing a more restrictive scope of parliamentary immunity, deleting the provision permitting a vote of no confidence for particular ministers were rejected. Also rejected was the proposal according to which the President could either accept dismissal of the government or dissolve the Sejm in the event of refusing the government a vote of confidence, as well as the proposal not to accept the final character of decisions of the Constitutional Tribunal.

Then the motion to accept in full the Constitution of the Republic of Poland together with accepted proposed changes raised by the President was subjected to a vote.

497 members of the National Assembly participated in the vote. A  $\frac{2}{3}$  majority equated to 332. 451 National Assembly members voted to pass the Constitution, 40 were opposed, with 6 abstaining. This meant that the National Assembly adopted the Constitution of the Republic of Poland in a third reading by the required  $\frac{2}{3}$  majority of votes.

### **Constitutional Referendum and Confirming Its Validity by the Supreme Court (25 May -15 July)**

Undoubtedly, efforts to hold a constitutional referendum as soon as possible<sup>31</sup> prompted the President to issue a decree to hold a referendum on the very day of the passing of the Constitution, namely the 2nd of April, setting the referendum date for the 25th of May.

The campaign preceding the referendum was characterized in part by very determined statements by opponents to the new Constitution. Some of them expanded a catastrophic vision of what would take place after the Constitution from the 2nd of April 1997 takes effect.

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<sup>29</sup> Printed Document of the National Assembly No 17 and Constitution Drafts 1993-1997, Part II, p. 372

<sup>30</sup> Stenographic Report from the 4 seating of the National Assembly of 2 of April 1997.

<sup>31</sup> It was often indicated in the statements and comments that the intention was to make a referendum before the visit of the Pope, J. Paul II in Poland which was announced for beginning of June.

Despite the very intensive political campaign as well as the clear polarization of positions, voting turnout has not been very high. 42,86% submitted valid voting cards, or 12 137 136 persons voted from among 28 319 650 persons entitled to vote.

Thus, the majority participating in the voting required by the Constitutional Act equated to 6 068 569. To the question: "Are you in favor of accepting the Constitution of the Republic of Poland passed by the National Assembly on the 2nd of April 1997?" 6 396 641 voters answered yes, or 328.072 more than the required minimum. 5 570 493 persons voted against the new Constitution.

433 protests were raised against the validity of the Constitutional referendum. After reviewing them, in a resolution dated 15 July 1997 the Supreme Court confirmed the validity of the Constitutional referendum conducted on 25 May 1997.<sup>32</sup>

**Signing, Publishing and Taking Effect of the Constitution  
of the Republic of Poland of the 2nd April 1997  
(16 July - 17 October 1997)**

The President of the Republic of Poland, A. Kwasniewski signed the new Constitution on 16 July 1997 during a ceremony in the Presidential Palace. The Constitution was published on the same date in *Dziennik Ustaw* [Journal of Laws] no. 78.

The Constitution of the Republic of Poland dated the 2nd of April 1997 took effect three months after being published, on 17 October 1997. On this date the Constitutional Act dated 17 October 1992 (so called "Small Constitution") and Constitutional Regulations from 1952 maintained by virtue thereof ceased to be in force.

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<sup>32</sup> Bulletin XLVI.