

## BIBLIOGRAPHIE \* BIBLIOGRAPHY

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### NOTES CRITIQUES \* NOTES

Stefan Rozmaryn, *Ustawa w Polskiej Rzeczypospolitej Ludowej* [The Statute in the Polish People's Republic], Warszawa 1964, PWN, 426 pages.

In his previous monograph (*Konstytucja jako ustawa zasadnicza PRL* [The Constitution as the Fundamental Law of the Polish People's Republic], Warszawa 1961), professor Rozmaryn used the 1952 Polish Constitution as the basis for his examination of the detailed characteristics of the Constitution as a fundamental statute. In his new book the author takes up the question of those statutes which according to the definition given in the Constitution are not fundamental, and which are therefore ordinary statutes.

Part I: "The constitutional concept and scope of the statute in People's Poland," consists of four chapters dealing with the main ideas in the book.

In Chapter I the author points out that the statute is an enactment by the Sejm, which gives it appropriately high status. Conversely, the Sejm takes precedence over all other State bodies precisely because it, and it alone, has power to pass laws. Another element in the concept of the statute from the constitutional point of view is that the statute must be passed by the Sejm according to the legislative procedure, that is, according to /the procedure laid down by the Constitution for the enactment of statutes.

In Chapter II the author presents forcible arguments for interpreting the Constitution as defining the statute as something that always and exclusively establishes legal rules that are the source of the law—therefore it is a general act. In other words, it is an act "... that governs the behaviour of people defined as certain categories, not people as individuals" (p. 48). This implies that the statute cannot deal with individual, concrete cases. According to professor Rozmaryn, the State budget and economic plans are also cases of general acts. He criticizes the present practice whereby the Sejm passes the State budget in the form of a resolution and the State Economic Plan in the form of a statute. In the author's view both should be statutes. He likewise thinks that the statute would be the more proper form for the act by which the Sejm approves a decree (in Poland at present the decrees issued by the Council of State are approved by resolutions of the Sejm). Since the statute is meant to deal with categories, not individuals, it is a repeatable and therefore a permanent enactment, thus enabling it to fulfil the important function of exerting an active influence on public life.

Chapter III deals with the question of the validity of the statute. It can be confidently stated that according to the Constitution the statute has greater powers than any other rule placed below the fundamental law. This is because.

"1) only statutes are universally applicable in their own right,

2) the statutes can be modified, repealed, or suspended only by another statute, whereas they themselves may modify, repeal, or suspend every other legal rule" (p. 114).

The socio-political importance of the statutes is increased by the fact that they can fix the entire trend of the State's activities.

In the author's opinion the legal powers of decrees are not on the same level as the legal powers of statutes, since decrees are a suitable form neither for enactments such as the State budget or economic plan, or the Standing Orders of the Sejm, nor for any enactments regulating the activities of the Sejm.

The fact that in the above sense the statute has the highest legal powers does not mean that all other legal enactments lower than constitutional enactments are necessarily "derivative" from statutes. The statutes can be considered "primary" only with regard to those legal enactments which take their validity from a statute. (The author criticizes the term "delegation" as being inexact, for there is no "delegated" legislation in Poland, only orders and regulations issued in pursuance of statutes.)

Chapter IV, is concerned with the scope of the statute. Professor Rozmaryn holds the view that it would be inadmissible in a socialist country to give exclusive powers to legislate on certain questions to a non-representative body. On the other hand it is possible—though only by constitutional means—to give such powers to the provincial representative bodies, that is, the people's councils, with regard to strictly local matters.

Part II of the book, headed "The statute and other legal regulations in Poland," has two chapters. Chapter V is concerned with the relationship between the statutes and enactments by the administrative bodies, while in Chapter VI the author considers the relationship between the statutes and international agreements. As for orders, professor Rozmaryn says that according to the Constitution these are acts by an organ of the central administration and that they have a definite relationship to a statute (they are issued as a result of powers given by the statute, and are aimed at executing the provisions contained in the statute). This definition of the order is supplemented by other characteristics described in the Act of 30th December, 1950<sup>1</sup> as follows: 1) the order is general in scope, 2) it is issued by a supreme administrative organ, 3) its powers are derived from a particular Act, 4) its issuing is either optional or mandatory, 5) the form of an order must be expressly provided by the Act, 6) it can't be *ultra vires*, 7) it is consistent with other Acts in force, 8) its text clearly states from which particular Act its powers are derived, 9) it is published in the "Dziennik Ustaw" [Journal of Laws].

The Constitution, provides not only for orders but also for resolutions, a separate kind of regulations issued by the Council of Ministers.

Since the Constitution does not require the passing of statutes transforming international agreements into "Polish laws," nor has such a requirement arisen in practice, these agreements, according to the author, are applicable within Poland itself *prioprio vigore*. Where the matter is such that it can be dealt with exclusively by a statute, but only then, the agreement must be published in "Dziennik Ustaw," of course after it has been ratified by the Council of State. By itself a statute cannot "repeal" the powers of an international agreement with regard to questions arising within Poland. As long as the agreement is valid in the international arena, it is valid in Poland as well.

Part III is entitled "The democratization of the legislative process in Poland." It contains a number of conclusions and postulates put forward by the author. These conclusions are based on the following considerations: 1) account should be taken of existing state of social development and of the balance of forces between the classes, 2) those institutions that encourage democratization should be linked with the permanent institutions (forms) of the organization of society, 3) the constitutional

<sup>1</sup> On issuing of "Dziennik Ustaw" and "Monitor Polski" (J. of L., No. 58, Chap. 524).

principle as to the supremacy of the Sejm as compared with other State bodies should be developed. Starting from these premises, professor Rozmaryn advocates giving legislative initiative to the trade unions central authorities, other social organizations and the voivodship people's councils. He also takes the view that such bodies should participate to a greater extent in the legislative process (such organizations could give their opinion on draft bills, and take part in the discussion at plenary sessions of the Sejm). The Sejm commissions should arrange for public discussion on bills put before the Sejm, which could also be an important element in the democratization of the legislative process.

In professor Rozmaryn's opinion, the Constitution should also provide for referenda (which would be law-making). Any change in the Constitution itself should be made only on the basis of a referendum.

Excellent summaries in Russian and French are attached.

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