

#### THE EIGHTH SESSION OF CHAIRS OF THE CONSTITUTIONAL LAW

On May 3-5, 1966 there was held the VIIIth session of chairs of constitutional law. Conferences of representatives of the Polish science of constitutional law have become a usual practice, and beginning with 1959 they are organized every year by individual chairs in a fixed alteration.<sup>1</sup>

The agenda of the VIIIth session of chairs of the constitutional law which is to be reported here included three papers. The first one, *Some Questions of the Contents and Application of Constitution of Polish People's Republic* was presented by prof. Andrzej Burda. As the first question the author pointed out the characteristic features of the Constitution that influenced and have continuous influence on its enforcement. The author is of the opinion that the Constitution reflects distinctive features of political and economic situation and the attributes of ideology dominant in the period of its enactment. The Constitution is characterized by a great conciseness and consequently by generality of provisions. This characteristic feature is followed by the next one, i.e., lack of adequate clarity of the con-

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<sup>1</sup> Compare, *Problems of Modern Constitutional Law*, in: *Proceedings of the VIIth All-Poland Scientific Session of Chairs of the Constitutional Law, May 21 -22 1965*, Wrocław—Warszawa—Kraków 1967. (Annexed agenda of the first seven sessions of chairs). The IXth session was held in May 1967.

stitutional provisions and too great economy in specifying the meaning of the terms and the definitions used. Further, the constitution includes quite a number of rules "with particular political load" what with scarcity of rules of technical and organizational nature gives negative effect and it makes particularly difficult the realization of rules expressing political principles. In the author's opinion, further development of socialist constitutionalism will bring advantageous changes in this subject. The constitution of Polish People's Republic shows certain inadequacies in regulating the responsibility of the state organs and particularly with regard to the problem of control of their activity within the assigned competence.

Further, the author discussed the problem of implementing the constitutional provisions by way of usual legislation. He pointed out that in the Polish practice so far, the rules of the constitution determining main direction of social and economic development are being realized energetically and consequently. The matter looks a bit worse if one considers the legislative implementation of the constitutional promises as regards the organization and activity of the state apparatus.

The author attributed particular role to the usual legislation in the process of implementing the constitutional rules concerning civil rights and liberties. The importance of this problem is in consequence of the very essence of socialism which considers human individual, the degree of his liberation, and development of his personality as its starting point. As the author points out, the legislation also in this field in principle realizes the provisions of the constitution properly; some points, however, may be considered as regards more effective ensuring and applying in practice those provisions through clear regulation, more concrete and clearly reflecting the sense of the corresponding constitutional rules.

This remark of the author is in connection with his more general suggestion as to including in the constitution legal guarantees to a greater extent and to specifying more comprehensibly the responsibility of those who exercise state power. In the author's opinion the appropriate verification of mutual confidence of those who govern and those who are governed is necessary also in the socialist country.

The paper by prof. Burda was followed by a lively discussion. The participants had, as a matter of fact, no objections against the fundamental theses of the author, they were, however, of different opinion than the author as well as they differed in opinion between themselves on specific problems such as the question of evaluation of usefulness of the institution of recalling Members of Sejm, the question of exercising by the Sejm its control function, the question of ensuring the responsibility of the state organs. All over the discussion it was appreciated the role of the constitution in the political life of Polish People's Republic with all its imperfections as to which there were made suggestions for improvements to be done in accordance with social changes and needs of our time.

On the second day of the session prof. Konstanty Grzybowski read his paper on relations between state and church. The author purposely confined himself to presenting typology of these relations. Rejecting typology of H. Krüger, he distinguished two fundamental types of relationship between state and church never existing though in a pure form :

1 ) state considers belonging to church as public obligation (state religion) ; 2) state demands complying with certain minimum of rules of social relationship (denominational groups are treated as associations). Besides fundamental typology, the author distinguished the following detailed solutions: 1) there exists one sovereign in the area of state and religion (caesarean papism and papistic caesarism) ; 2) there exist two tops (centres), each sovereign in its range (solution typical for absolutism of the XVIIth century); 3) state is neutral in relation to religion and treats denominational groups as corporations of public law; 4) state takes over guidance of an individual and treats denominational groups as common asso-

ciations and cares that they do not become groups of pressure. On the background of this typology the author presented legal constructions of relationship between state and church, which found its expression in different constitutions.

The relations between state and church in Polish People's Republic are based on prohibition of pressing citizens not to take part in religious activities and on prohibition to compel for participation in such activities, and on the principle that misuse of the freedom of conscience and denomination for purposes disadvantageous for interests of Polish People's Republic is punishable. This solution is in the author's opinion not quite appropriate. He is of the opinion that another assumption of separation of state and church should be taken : there should not be maintained neutrality towards denominational groups but it should be kept in relation to denominations and ordinances.

The discussion that followed the paper by prof. Grzybowski concentrated chiefly on concrete problems of legal relations between state and church. There was considered whether separation of state and church existed from the beginning of Polish democratic state or whether it began from the time of enacting the constitution of Polish People's Republic. There was discussed legal permissibility of concordat with the catholic church in the light of the principle of equality of all denominations. The discussion was on the legal character of agreements between state and church, on the conception of a party representing the interests of church, on the problem of caesura between *res spirituales* and *res temporales*.

On the third day of the session, prof. Franciszek Ryszka read the paper *Political Parties in the Systems of Government of Western Europe States*. The author's purpose was to present selected aspects of a real role of political parties in the governing mechanism of modern Western states. The consideration of the real role of political parties with omission of their legal situation on the background of the constitution was due to the author's conviction that constitutions operate with a collection of rules that were generally formed in time of liberalism, and they actually do not correspond with current political reality.

In the course of the discussion certain theses of the paper were questioned. The polemics centered particularly on the problems concerning a doctrinal levelling of political parties, role of the constitution in a modern state, and crisis of a parliament. There was also approached the problem of significance of a person of leader, and the role of mass communication media in political life.

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