

**II JAPANESE - POLISH LAW DAYS**  
**(Ritsumeikan University, Kyoto, 30 September -1 October 1995)**

**Ewa Popławska**

The second Japanese-Polish Law Days, a meeting of constitutionalists from the two countries was held at Ritsumeikan University, the subject this time being the recent transformations in the Polish political system.

It has become the rule that the Law Days are held immediately following world congresses of the International Association of Constitutional Law [IACL], the first being staged in Warsaw in 1987, after the Paris Congress. Thus, the Kyoto Law Days saw Polish participants in the IV IACL Congress in Tokyo present: prof. K. Działocha (Wrocław University, President of the Polish Association of Constitutional Law), prof. E. Gdulewicz (M. Curie—Skłodowska University of Lublin), prof. A. Gwiżdż (Warsaw University, President of the Legislation Council of the Chairman of the Council of Ministers), prof. M. Kruk-Jarosz (Institute of Law Studies of the Polish Academy of Sciences), dr. E. Popławska (ILS PAS), dr. K. Wojtowicz (Wrocław University) and prof. S. Zawadzki (Honorary President of IACL); Japan was represented by professors of constitutional law, members of the Japanese section of IACL: prof. Y. Higuchi (Tokyo-Todai University, first IACL Vice-President), prof. Y. Okudaira (Chairman of IACL Japanese section), prof. H. Nakamura (Sendai University); also constitutionalists dealing in the law and politics of East-Central European countries: prof. T. Suzuki (Tokai University in Tokyo) and prof. A. Komorida (Tokyo-Todai University), as well as the hosts from Ritsumeikan University in Kyoto: prof. K. Hatanaka, prof. K. Yamashita and other researchers, Prof. F. Morrison of Minnesota University (USA) also took part in these Days.

Prof. M. Ichikawa, dean of the Law Department of Ritsumeikan University opened the proceedings, welcoming the participants and highlighting the several years of fruitful cooperation of Ritsumeikan University jurists with their Polish partners, especially from the Polish Academy of Sciences, with which the University has a scientific exchange agreement. He singled out prof. S. Zawadzki, who holds a University honorary doctor's degree, in his welcoming words.

Speaking for the IACL Japanese section, prof. Y. Okudaira expressed his delight with this successive scientific meeting with Polish constitutionalists, giving rise to par-

ticular interest in the present period of transformations in Poland's political system and the preparations for a new constitution.

Prof. K. Działocha, who headed the Polish group, warmly thanked the Japanese constitutionalists for their invitation to a joint discussion on the complexities of Polish systemic transformations and presented initial remarks on how they presently stand. He stressed that while Poland has the fundamental transformation of the state system behind it, an optimal shape of systemic institutions is still being looked for. He expressed the hope the exchanges of experience here will also be helpful to his Japanese partner. He concluded by presenting a special ornamental version of Poland's 3rd of May 1791 Constitution to his Japanese hosts.

Prof. K. Yamashita chaired the first part of the proceedings. He termed the Law Days as yet another chapter in Ritsumeikan University's cooperation with Polish constitutionalists.

Prof. A. Gwiżdż delivered the first paper entitled: "Constitutional Transformations in Poland 1989-1995" in which he outlined the genesis of the transformations of the late 1980s and early 1990s, highlighting external (international) and internal (social) factors which led to the fundamental systemic transformation. He described its scope and area in which it occurred, its social and political significances as well as the manner in which it is being reflected in regulations of constitutional law. Prof. A. Gwiżdż concluded his presentation by mentioning those issues in the regulation of which the greatest controversies are aroused, including the formula of a state "substantiating principles of social justice", the relationship between the state and religious groupings, whether Parliament should comprise one or two houses, the model of supreme administrative organs and the scope of protecting social rights.

Prof. E. Gudlewicz and prof. M. Kruk-Jarosz spoke on "Selected problems in currently valid Polish constitutional law", describing the present state of constitutional regulations: valid constitutional and parliamentary acts regulating such material. In specifying the systemic principles, they drew attention to new principles, *e.g.* that of the division of power, and those which have undergone far-reaching qualitative change. They described the structure, competence and function principles of state bodies: Parliament, Government, President, Supreme Chamber of Control, Supreme Court of Administration, Constitutional Tribunal, State Tribunal, Commissioner for Civil Rights Protection (Ombudsman). While admitting that the present state of Polish constitutional legislation is somewhat incoherent, vague and inconsequential, the authors expressed the view that the "Little Constitution" in conjunction with the still valid provisions of the 1952 Constitution do create the potential of obtaining a "small stability" in the functioning of the state. This is all the more important at present, in that the constitution is a criterion to evaluate the legibility of government activity and the object of notable social interest.

The next paper was by prof. A. Komorida, a political theoretician and expert in East European issues, and dealt with "Constitutional Crisis in the Process of Systemic Transformation and the Presidential System: Russia in 1993 and Poland in 1995". Though comparative legal research in contemporary Poland takes the law in Western Europe

and the European Union as the point of reference, while constitutional comparison with East and Central European countries offer less fruitful results than political and economical comparative research for instance, it is worth while to pay attention to certain systemic phenomena analogies in those countries during their transformations. While accepting existing systemic differences, the author found similarities between the 1993 conflict of Parliament with the President in Russia (national crisis, military intervention, early Parliamentary elections and the approval of a new Constitution) and that in Poland in the winter of 1995 (the President's threat to dissolve Parliament and, ultimately, a significant government shake-up). The basic difference lays in the manner in which the two conflicts were finally resolved: by the use of force in Russia and by political compromise in Poland.

Prof. K. Wojtowicz presented the "Impact of systemic transformations in Poland on the way in which international agreements are applied in the Polish legal system". Since there is no constitutional regulation of the status of international legislation in the hierarchy of legal sources in Poland, court of law jurisdiction has been decisive in this area. Prior to the democratic transformations, the Supreme Court declared that Poland should respect international agreements only in external relations which meant that Polish courts of law could not base their verdicts on the provisions of such agreements. The Supreme Court revised its decision following the basic change in the constitution in 1989 and Poland's ratification of the Vienna Convention on the law of treaties. Under these provisions a place has been established for international legislation in the national legal system according to the draft constitution being drafted by the Constitutional Committee of the National Assembly.

Prof. S. Zawadzki devoted his presentation to the High Administrative Court (NSA) and its 15 years of activities "From the Experience of the High Administrative Court of Poland". He spoke of the formation of the NSA in 1980 as an important act in the process of consolidating the system of law and order and as the foundation of a democratic law-abiding state which emerged at the 1989 political turning point. In describing the genesis of the NSA the author stressed that it arose out of a social initiative of the legal milieu. He pointed to three stages in the NSA's 15 years of activity: in the first it resolved organisational and personnel matters and defined its place in the system of law protection organs, in the second - it operated systematically contributing substantially to the interpretation of regulations, while in the third it expanded its area of powers by substituting the enumeration of powers by a general clause (1995). Prof. S. Zawadzki said he is convinced that by introducing this amendment, the updating of the NSA Act will result in the consolidation of its position in defending civil rights and, in effect, improve relations between the public administration and the man-in-the-street.

The second part of the proceedings, chaired by prof. K. Hatanaka, opened with a paper delivered by dr. E. Popławska on the "Legal position and effectiveness of the Commissioner for Civil Rights Protection in Poland". This institution established during the period of real socialism gained in importance after the collapse of the communist regime when constitutional guarantees of civic liberties were given a practical shape. On the other hand, fresh problems appeared related to the rapid rate of transformations

of the State, law and economy, often implemented without regard for the human aspect. This institution won enormous popularity due to the knowledge of the law and the determination of both civic rights spokespersons who have held the post to the moment. This popularity, paradoxically, has alarmed the officiating spokespersons since it speaks either of the ignorance of the average person as to regular procedures of vindicating his rights or of a lack of trust in their effectiveness. Excessive activity and consolidation of the spokesperson's position which is an institution by nature only additional to the system of legislative, executive and jurisdictional authorities, can give birth to a risk of undermining the internal mechanisms of counterpoising and mutual control of these three sources of authority.

The Polish papers presented to the conference were summed up by prof. K. Działocha in his submission entitled "Towards a New Constitution of the Republic of Poland". He highlighted the paradox that Poland is the first country in which radical systemic reforms were undertaken and is also that in which Europe's first Constitution was approved, but that it still does not have a new, integral constitution to satisfy democratic principles. The reasons for this, in the author's opinion, are: the absence of a developed and stable system of parties with clearly defined programmes, the short terms of office of the first two post-1989 governments, the far advanced political nature of the present debate on the future Constitution and the long and complex procedure of drafting and approving the Constitution envisaged in the Act of the 23 April 1992. Describing the present stages of work on the new constitution prof. K. Działocha said he is convinced that, though the "contract" Parliament of 1989 could not boast fully democratic "papers", the best moment to approve the constitution was at the turn of 1989. He enumerated the systemic issues which are the subjects of the fiercest controversy both among the several drafts presented to the General Assembly's Constitutional Committee and also during its labours: the extent to which the state may interfere in the economy, mutual relations among Parliament, Government and President and the constitutional formula of Church-State relations. In his review of the effects of the work of the Constitutional Committee (state of preparations to draft a single project), he admitted that the project of a relatively efficiently functioning system of state organs under the government within the present state of constitutional regulations will influence the wording of new solutions and allow the future constitution to avoid errors.

Prof. T. Suzuki's presentation in which he analysed the process of democratisation in Poland on the background of other East and Central European countries and the privatisation process and the fundamental socio-economic reforms within those countries, preceded a discussion on the presented papers. The Japanese participants were interested in the development of the theory of constitutional law in contemporary Poland and its impact on systemic reforms (prof. K. Hatanaka). The relationship between constitutional law and state institutions is a fundamental one, especially as regards the formulation of a new constitution. The present valid definition of the Polish state relates to the theory of a law-abiding state, while simultaneously referring to the principle of social justice. Japan can serve as a valuable example of how state interventionism in large-scale economic strategy can be reconciled with economic liberalism on the micro

scale that is in the day-to-day running of businesses. Such a selective approach would be beneficial in Poland's case since it would allow social conflicts, stemming from radical economic reforms, to be avoided (prof. S. Zawadzki). Theoretical concepts of the state have taken pride of place in the work of the National Assembly's Constitutional Committee, over the practical wording of the new constitution. In January 1995, the concept of a democratic law-abiding state implementing the principles of social justice won the day. The consequence of this element of the definition of the state is, in particular, a much expanded chapter of the project concerning social rights, which - should they not be respected - could be appealed against otherwise than against violation of individual liberties (prof. K. Działocha).

The concept of a law-abiding state used in the Polish constitution, from the viewpoint of the theory of law is not unambiguous since its various concepts function within it: specifically - the German "Rechtsstaat" and the "Rule of Law", related to the Common Law system and the control, by the courts, of abiding by the law. In Japan, the first comprehension of a law-abiding state was imposed under the Meiji Constitution of 1889; the second followed World War Two (prof. Y. Okudaira). A third concept of a law-abiding state may be further distinguished in continental Europe: "l'Etat de droit" where the role of common courts of law in protecting and interpreting the scope of executive law is assumed by the constitutional council (prof. Y. Higuchi). Prior to 1989 a specifically Polish concept was concocted of "praworządność" - formal legality. The currently valid formula of a "democratic law-abiding state" has German inspiration at its roots, though its interpretation by the Constitutional Tribunal, High Administrative Court and the Supreme Court speak of an original Polish concept emerging (prof. Działocha). The extent to which the formula of a social state will be included in the planned constitutional provisions is enormously important, since it could bear on their social acceptance in the national referendum which would approve the constitution (prof. S. Zawadzki).

A significant systemic problem in both Poland and Japan is the relationship of the state to religious groupings. The strict disestablishment of the state from religion under the 1947 Japanese constitution still remains a subject of controversy (prof. Okudaira). In Poland, where the Catholic Church played a substantial role in the fight against the communist regime, it is aspiring to win a similar position in the process of systemic transformation. Church-State relations have been the subject of two controversial Constitutional Tribunal verdicts (prof. K. Działocha). The wording proposed in work on the constitution on "independence and mutual cooperation of the Church and State" - its genesis and precise meaning when the state is, by nature, independent, evoked the interest of the Japanese participants (prof. K. Yamashita). In reality, this wording is not wholly clear and the "cooperation" it envisages is in those areas which are the objects of concern of both Church and State, cooperating for the good of the individual (prof. K. Działocha).

Minority churches and the financing of religious groupings was another issue raised (prof. H. Nakamura).

Prof. Y. Higuchi summed up the proceedings. He compared Poland's present situation with that in Japan 50 years ago: both countries emerging from a period of monocratic rule, basing on the proclamation of new democratic systemic principles in the constitution. The major historical difference lies in that Japanese constitutionalists had no possibility to participate in preparing the constitution which was shaped by the American occupation forces, while the role of Polish constitutionalists in drawing up their new constitution is very great. For that reason, prof. Y. Higuchi congratulated the representatives of that scientific milieu and expressed his gratitude for their presentation of Poland's contemporary systemic problems. Speaking for the Ritsumeikan University hosts, prof.K.Hatanaka offered his thanks to the participants in the Law Days which he termed - a weighty and useful meeting of scientists. Prof. A. Gwiżdż thanked the organisers of the event and invited Japanese constitutionalists to Warsaw for the III Polish-Japanese Law Days.