

CIVIC RIGHTS IN POLAND IN THE FACE OF EUROPEAN STANDARDS

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1. The process of adjusting human and citizen's rights and freedoms — to the European standards remains in Poland in *statu nascendi*. The degree of advancement of this process should not be evaluated only by the state of regulation of rights and freedoms in the Constitution of the Republic of Poland, since it is a process connected with the transformation of the state's political system, transformations in social and economic life, and with formation of new relations between the individual, society and the state. In some spheres the process is but initiated, whereas in others it is either advanced or continued.

Even confined to the constitutional regulations, such evaluation would have turned out inadequate, since some of constitutional provisions regulating rights and freedoms come from section 8 of the Constitution of 1952.¹ Such assumption confined to the legal sphere only would also be inappropriate and incomplete; since there occurred changes enabling guarantees and extension of rights and freedoms, and also creating new grounds to enact rights and freedoms in the new constitutional order.

The process of adjusting rights and freedoms to the norms binding in the democratic states of Europe is of a complex and multiform nature. It started together with the process of reforming the state in the 80s and hasn't been accomplished yet. It is being completed both within the framework of constitutional regulations and other legal acts as well as by changes of political, economic and social nature being continued in Poland.

2. The future model of the State is shaped by Poland's political transformations. The present model of the state has been defined in the article 1 of the Constitution of the Republic of Poland ("Small Constitution") as follows: "the Republic of Poland is a democratic lawful state, realizing the rules of social justice". The Constitution esta-

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¹ The 1952 Constitution as an uniform legal act stopped to be in force under article 77 of 17 October 1992 Constitutional Act on mutual relations between the legislative and executive power of the Republic of Poland, as well as on local government (Journal of Laws N° 84, item 426). However, some regulations remained in power — including section 8 regulating fundamental rights and freedoms of citizens. The way in which the 1952 Constitution was annulled is sometimes criticized from the legislative technique point of view. See *Konstytucja Rzeczypospolitej Polskiej. Wybór źródeł* [Constitution of the Republic of Poland. Selection of Sources], Lublin 1992, p. 4.

blishes nation's supreme control over the state as well as definite guarantees determining the concept of the state. They are as follows: the guarantee of local government's participation in exercising power and the freedom of activity undertaken by other self-government bodies, the guarantee of freedom of economic activity regardless of a form of ownership and the guarantee to protect property and the right to succession. As the process of shaping the concept of the State has not yet been completed, the concept of rights and freedoms is an incomplete deed as well. Undoubtedly, there exist close connections between both these concepts. The consequence of these links is that accepting certain concept of the state determines the status of the individual and his rights in the state, as well as assuming a certain model of rights and freedoms influences the concept of the state.²

The experiences arising from the contemporary political history of Poland saying that the efforts to create a state guided by democratic principles managed to shape equally democratic human and citizen rights and freedoms, making the individual the legitimate subject participating in state's and society's life. Rights and freedoms in the reborn Polish State, under the rule of 1921 constitution, were formed in such a manner.³ On the other hand an attempt to build an omnipotent state resulted in drastic civic rights restrictions. By means of the subsequent 1935 constitution, the status of the individual was explicitly subordinated to the objectives of the state authorities who manifested authoritarian ambitions.⁴ The functioning of these constitutions, an affirmative attitude of society towards the constitution of 1921 and the disapproval of the 1935 constitution gave rise to a wide scale of experiences.⁵ It was common to borrow good experiences and traditions while creating the concept of the status of the individual in the post-war Polish State during the conceptual works carried out by the émigré Legislative Works Commission acting in the time of the Second World War period in London.⁶ The 1952 constitution passed in post-war Poland and marked with the features of the authoritarian state did not revert to those good traditions and legacy⁷. Nowadays, a process of democratization and reforming the state is a process a rebours from authoritarianism to democracy.

² See Z. Kędzia, „Konstytucyjna koncepcja praw, wolności, obowiązków człowieka i obywatela” [Constitutional Outline of Rights, Freedoms and Obligations of a Human and of Citizen], (in:) *Prawa, wolności i obowiązki człowieka i obywatela w nowej polskiej konstytucji* [Rights, Freedoms and Obligations of a Human and Citizen in the New Polish Constitution], Poznań 1990, pp. 7-8.

³ Thus W. Komarnicki, *Ustrój państwowy Rzeczypospolitej Polskiej* [Constitutional System of the Republic of Poland], Warszawa 1934, pp. 161 - 163, and passim.

⁴ See E. Gdulewicz, „Niektóre koncepcje ustroju politycznego w Konstytucji Rzeczypospolitej Polskiej z 23 kwietnia 1935 r.” [Some Concepts of Political System in the Constitution of the Republic of Poland of 23 April 1935], *Państwo i Prawo* 1975, № 3, p. 77 and following.

⁵ See J. Zakrzewska, *Spór o konstytucję* [Dispute over Constitution], Warszawa 1993, p. 43 and following.

⁶ See A. Jankiewicz, *W poszukiwaniu idei państwa i prawa* [In search for an Idea of State and Law. The Concepts of the Commission of Legislative Works of Ministry of Justice of the Government of the Republic of Poland (1942-1945)], Warszawa 1992, pp. 136- 138, 216, 221, 224-225, and passim.

⁷ Until passing the 1952 Constitution, the post-war Poland had a constitutional act of 1947 on political system and on activities of supreme bodies authorities of the Republic of Poland (called at that time the "Small Constitution").

A process that is being realized nowadays cannot be a simple return to democratic standards of the 1921 constitution regulating rights and freedoms. A setting up a catalogue of rights and freedoms will be the task of authors of a future Polish constitution. However, in the light of the going on discussions, social opinions and drafts of the constitution lodged to the National Assembly, it becomes obvious that the catalogue of rights and freedoms will be considerably different from the standards set forth in the 1921 constitution. Without any doubt, an extension of the catalogue of the rights and freedoms beneficial for a citizen and for the individual may be expected. For Poland integrating with the European democratic states it is impossible not to take into account both European standards in the sphere of rights and freedoms, as well as accepted in the constitutions of these countries regulations of rights and freedoms being a part of democratic system. In new European democratic states' constitutions passed after the Second World War, a tendency has to be noticed to an extension of a catalogue of rights and freedoms. In connection with that appeared new rights, and the extension of the objective scope of rights and freedoms already generalized.⁸ There also has been an extension of the subjective scope of those rights and freedoms, covering not only the citizens of a specified state, but also all persons subordinate to its jurisdiction. Considerable influence on these changes had the fact of adoption of international agreements establishing human rights and freedoms in global or regional scale. The former guarantees of rights and freedoms having previously the internal implementation were extended by creating international forms of supervising rights and freedoms observance, as well as by functioning of protection mechanisms allowing effective vindication of rights in case of their violation.

3. Restitution of democratic character to rights and freedoms will not only be limited to some corrections, but will require their totally different wording than that of the 1952 Constitution. Let's put aside all historical context and the analysis of the sources the creators of this constitution drew models from while establishing the catalogue of rights and freedoms, although both of these issues had vital impact on legal character of the regulations and on the way of realizing rights and freedoms in post-war Poland.⁹ On the other hand, an enhancement of the most important principles, ways of wording and accomplishment of rights and freedoms basing on the 1952 Constitution seems to be necessary from the point of view of comparative analysis of changes that are currently taking place.

The collectivistic approach giving the priority to the community predominated in the thinking of those days, the value of the individual's rights was recognized in the context of community members organized into a state. Due to this fact the rights

⁸As an example the following rights and freedoms may be mentioned: freedom of expression and freedom to receive information, right of participation, right to cultural heritage, right to healthy natural environment. Also see Z. Kędzia, „Konstytucyjna ...”, op. cit., pp. 28-29.

⁹See K. Opalek, *Podstawowe prawa i obowiązki obywatelskie w świetle konstytucji PRL* [Basic Civic Rights and Duties in the Light of Polish People's Republic Constitutions], Warszawa 1955, p. 49.

which might be used in a collective way were accentuated. The principle to subordinate rights and freedoms to the interest of working people was a binding one in the state. Out of this resulted the principles of concertation of interests of the individual, the society, and the socialist State, as well as correlations of rights and duties. A class sense of freedom was based on the fact that its scope has been reduced to participating in realization of social and political aims of the State. Freedom was not assigned to the opponents of the socialist political system and civic rights could not be abused to accomplish the anti-socialist goals. Legal status of an individual was therefore determined both by the catalogue of rights and freedoms, as well as by the duties. The accomplishment of duties equal to all was to contribute to realization of civic rights guarantees.¹⁰

Both a community and the individual were entitled to as many rights as they were granted with State's consent. These rights were limited to the degree to which this restriction was in the State's interest. It should be added that the restrictions expressed by the constitution were without doubt motivated by the ideological and class reasons. However, these restrictions were not anchored exclusively in the constitutional norms but they mainly resulted from the political system's principles and the current policy of the state.¹¹ This kind of approach expressed the divergence between the officially pro-freedom character of constitutional standards and the actual possibility to exercise the declared rights and freedoms.

Subordination of the individual to state's interests resulted in the fact that the constitutional norms defining the status of the individual and his rights were addressed to the citizen, not to the individual. State's doctrine of that time did not however perceive an essential contradiction between the interest of the individual and the interest of that individual as a citizen.¹² The ideal had to be the political integration of society assigning to the individual the role of a loyal, good and active socialist state citizen.¹³

The 1952 constitution favoured economic, social and cultural rights. Political freedoms and personal rights were in the hierarchy of values considered to have less importance, since it was assumed that the extension of freedom will result from the development of the economic base and improving material well-being of

¹⁰ Ibidem, p. 87 and 141. Also see L. Wiśniewski, „Podstawowe prawa, wolności i obowiązki obywateli PRL na tle nowych konstytucji socjalistycznych” [Basic Rights, Freedoms and Duties of Polish People's Republic's Citizens on a Background of New Socialist Constitutions], *Państwo i Prawo*, 1977, N° 12, pp. 12 - 15; also R. Wieruszewski, „Zasada współzależności praw i obowiązków obywatelskich w państwie socjalistycznym” [The Principle of Correlation of Citizens' Rights and Duties in a Socialist State], *Państwo i Prawo*, 1977, N° 10, pp. 94- 104.

¹¹ Restrictions and prohibitions conceived *expressis verbis* concerned abuses of freedom of conscience and creed as well as freedom of association which goals and activities were threatening the ruling political system and legal order. Also see J. Zakrzewska, *Spór ...*, op. cit., pp. 18-19.

¹² See M. Maneł, „Jednostka i obywatel” [An Individual and a Citizen], *Państwo i Prawo*, 1958, N° 11, p. 740.

¹³ Ibidem, pp. 741 -742.

society.¹⁴ The enhancement of social, economic and cultural rights was accompanied by the theory of feasibility of fulfilling these rights by the system of material guarantees, often being of a purely declarative character, while legal guarantees have been almost entirely omitted. Such way of regulation made the implementation of social, economic and cultural rights dependent on state's economic condition and it precluded the execution of rights by means of legal procedures. In reality, as a result of increasing economic difficulties in the mid 1970s and later of a long-lasting economic crisis, state's abilities to assure the implementation of social rights shrank, reducing considerably the reality of constitutionally declared civic rights.

The lack of legal guarantees, the declarative wording of regulations, the divergence between the contents of the constitution and methods of ruling as well as economic inefficiency of the State created a state of fiction, consisting in the fact that rights and freedoms assembled in the constitution were for political causes, breached and not performed, or of the economic reasons, became impossible to be fulfilled.¹⁵

4. At it was stated before, the regulation of rights and freedoms in Poland in its fundamental outline is based on still binding regulations of the 1952 Constitution. However, it does not mean that over 40 years the contents of the regulations was not subject of changes. Within the framework of subsequent nine amendments between 1954 and 1976 there were no direct modifications concerning rights and freedoms. Only as a result of the amendment introduced in 1976¹⁶ changes of a formal nature were accomplished (new numbering of the section regulating rights and freedoms, new numbering of the particular regulations, change of order of the regulations and forming new regulations out of already existing ones), yet especially the contents of the regulations was changed and supplemented, new provisions were added and some of the formerly binding ones were annulled. The changes carried out until 1989 didn't have an impact on State's nature and on the concept of rights and freedoms. They were first of all subordinated to the current and prospective goals of the State, or they were to reflect the development of the socialist political system.¹⁷ While amending the Constitution in 1976, the State authorities introduced regulations expanding social rights, declaring free medical care for all employees and their families, free education on all levels and making of the secondary schooling system general, state's guarantee was secured for alimony rights and obligations. War veterans were granted state's protection in every respect.

On the basis of the 1976 constitutional amendment the right was introduced to take advantage of the values of healthy environment and at the same time an obligation was imposed on citizens to protect the environment.

¹⁴ See Z. Gałicki, „Ratyfikacja konwencji o ochronie praw człowieka i podstawowych wolności” [Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms], (in:) *Biuletyn. Ekspertyzy i Opinie Prawne*, Wydawnictwo Sejmowe, 1992, N° 1/4, p. 36.

¹⁵ See J. Zakrzewska, *Spór ...*, op. cit., p. 11 passim.

¹⁶ Journal of Laws, 1976, N° 5, item 29.

¹⁷ See L. Wiśniewski, *Podstawowe ...*, op. cit., pp. 21 - 22.

A norm of a programmatic character got a form of a constitutional regulation, indicating ways of improving housing problems; the same norm was considered to be a sign of State's care for family's welfare.

The change of views social stratification issue was reflected in the constitutional norms. The division of the society into well-defined social strata entitled to benefits on the basis of belonging to the respective social stratum was abandoned. However, stress was laid on a participation and co-responsibility of youth for country's development, making parents responsible for bringing up children to become righteous and conscious citizens. State's contribution to strengthening social position of women, especially of mothers and women active professionally was also declared.

The catalogue of personal rights was extended by State's care over Polish citizens staying abroad.

The 1976 amendment extended formal rights of citizens to perform social control in a form of engaging in consultations, discussions and submitting appropriate proposals. The constitutional right of appeal to state administration by the citizens was also introduced.

The idea was enhanced of constitutionalisation of a role of trade unions, which were to be not only the representative of employee's interests, but also a "school (...) of involvement in building socialist society". The said regulation alongside with others introduced by the 1976 amendment are the examples of the efforts of the then in power authorities to further ideologization of the norms regulating rights and freedoms.¹⁸ The ideological meaning of these regulations was changed only as a result of the amendment to the constitution of 29 December, 1989.

However, two extremely restrictive regulations being a relict from the repressive phase of the authoritarian system were annulled by the 1976 amending act. They provided severe criminal responsibility for abusing freedom of conscience and religion, sabotage, diversion, harmful activities or other attempts against social property.

Further changes in regulation of rights and freedoms took place as a result of the amendment to the constitution accomplished in 1989 and in 1991.¹⁹ There were changes within the rules directly regulating rights and freedoms as well as new regulations of a political nature extending the catalogue of rights and freedoms and defining the status of the individual in the state and in society. The most important changes in the constitution concerned confirmation of freedom of association in political parties, guarantees given to local government for exercising power and freedom of activity of other self-government bodies, guarantees of freedom of economic activity and the introduction of succession and property protection.

Both formal and substantial changes took place within the framework of the section regulating rights and freedoms. Some regulations of propaganda, ideological

¹⁸ See W. Wołpiuk, „Konstytucyjna charakterystyka ustroju politycznego państwa a rzeczywisty etap przeobrażeń społecznych w Polsce” [Constitutional Characteristic of State's Political System and Actual Stage of Social Transformations in Poland], (in:) *Studia Prawnicze*, 1989, N° 2 - 3, p. 278.

¹⁹ Journal of Laws, 1989, N° 75, item 444, Journal of Laws, 1991, N° 41, item 176 and N° 119, item 514.

and purely declarative nature were eliminated. The wording of some regulations formerly having class and ideological sense and of which contents didn't generate any real rights was changed. Formal transformations of constitutional regulations concerned primarily the name of the State, which was changed from the Polish People's Republic into the Republic of Poland.

5. The characteristics of changes of the constitutional regulations of the individual's position would be incomplete if its scope was to be limited to the regulations of the fundamental act directly establishing rights and freedoms. It can be assumed that in the democratic state a complexe of institutions created by the state and society as well as the international institutions and relations linking the state with international law and international community influence the implementation of rights and freedoms of an individual. It is composed of political and economic system, legal order, democratic system of legal protection bodies, way of execution of state's authority, way of realization of rights and freedoms, application and observance of international law. The majority of those conditions and institutions may be and are anchored in the constitutional norms. Constitutionalization of the institutions responsible for realization and protection of rights and freedoms of the individual or establishing these institutions by virtue of law provisions *eo ipso* do not guarantee observance of rights and freedoms. The experience acquired in the past years, especially lack of coherence between the constitutional norm and the reality, proved that besides established rights and freedoms and institutions called into being to implement them, change of way of ruling is necessary and in this context improvement in the realization of rights and freedoms.²⁰ In other words, there exists a necessity to combine lawful ways of implementing the rights and freedoms with the functioning of the institutions called into being to implement these laws.

The moment of starting the formation process of such institutions and conditions as well as question what forces influenced stimulatingly this process may be recognized as discutable. Undoubtedly, any changes carried out until 1989 were initiated by the authorities and the immutability of State's political system conditioned their substance. Equally undoubtful seems to be the fact that starting from the socio-economic depression in 1980, social pressure became an important factor forcing the authorities into concessions. The authorities were also forced to create the system of institutions intended to serve rights and freedoms protection.²¹

At the beginning of the 1980s the process of forming these institutions was initiated. On 31 January, 1980 an act on establishing the Supreme Administrative Court came into force and so did the amendment to the Code of Administrative Procedure. In such a way arised an essential change within the political structure of the Polish administrative control system, enabling the citizens to lodge complaints concerning administrative decisions. The other institutions of substantial influence on human

²⁰ J. Zakrzewska defines such change as "another philosophy of ruling", op. cit., p. 24.

²¹ Ibidem, pp. 10-11,23.

and citizens' rights were progressively formed, namely the Constitutional Tribunal (1985) and the Spokesman for Civic Rights (ombudsman) (1987). Both *sui generis* State's agencies, unlike the Supreme Administrative Court were anchored in the regulations of the constitution, what favourably contributed to strengthening their position. The activity of these institutions until the essential political turnover after the 1989 elections, was limited by the then existing political and social system and by the way of exercising power by the State. However, there is no way to diminish the importance of their function and activities, since they initiated mechanisms of the rule of law and became a truly existing entities, functioning in reality, which moreover, succeeded to obtain a high degree of independence from State's authority. The possibility of full development of their activity for the rights and freedoms protection arised in democracy and in the rule of law conditions.

The following changes were inspired by the contents of the "Round Table" agreement negotiated between the representatives of the opposition and the ruling Party.²² The statutory guarantee of freedom of association was introduced while formerly binding faulty regulations were cancelled. The trade unions act was amended, extending the range of unions' freedoms. The act regulating relations between the State and the Catholic Church was passed, as well as the new appropriate act guaranteeing freedom of conscience and religion.

The turnover of the political system occured after the elections in June 1989, in result of which Poland became a state of a different type. It was expressed by the constitutional and legislative amendments. The imperative of the transformations was not only the change of state's name but also a new regulation of the first article of the Constitution defining the character of the state and establishing the set of basic values, having vital importance for human and citizens' rights and freedoms. The regulation established the democratic character of the state guided by rules of law and realizing the canons of social justice.

The constitutional regulation establishing the democratic legal state became a ground for further changes. The rules of political pluralism and the guarantees of freedoms of forming political parties became guaranteed in the Constitution and in regular legislation. An act guaranteeing freedom of trade unions was amended. Legal rules of forming employer's organisations and of settling collective disputes were established. Election law and practice which enabled carrying out fully free and democratic parliamentary and local government elections were shaped in a new manner. The regulations on censorship and other restricting freedom of speech, expression and information and access to media were cancelled. Independence of the courts of law and their statutory supervising rights in relation to other bodies appointed to guard legality and to protect rights and freedoms were guaranteed. Some criminal, petty offences, labour, administrative and civil law regulations which might possibly restrict rights and freedoms of the individual were modified or cancelled. The princi-

²² *Porozumienia „Okrągłego Stołu”* [“Round Table” Agreements, Set of Documents], Warszawa 1989.

pies of applying law were amended. The penalisation of deeds formerly regarded as crimes against the State was limited. Repressions for political reasons were abolished.

The list of changes would be incomplete if two important for rights and freedoms institutions were not mentioned: the National Council of the Judiciary, responsible for guarding judiciary independence and the National Council for Radio and Television which is to guard freedom of speech in radio and television broadcastings, independence of the broadcasters' and receivers' interests and to ensure open and pluralistic character of radiophony and television.

Both political system turnover and the changes in the sphere of rights and freedoms protection offered premises for a gradual integration of Poland with the democratic European community. The first important stage of this process was the admission to the Council of Europe. Poland also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and declared acknowledgement of competence of the European Commission of Human Rights and of the jurisdiction of the European Court of Human Rights.²³ The ratification of the European Convention (1992) doesn't mean only a relative extension of the range of protective rights, but it first of all opens for Polish citizens and persons subject to Polish State's jurisdiction the way of efficient vindication of rights in case of their infringement by submitting claims to the appropriate international bodies. Therefore occurred a total change of the concept concerning human rights protection, since until 1989 this matter was considered to belong exclusively to State's internal competence and official opinions were voiced against institutionalisation of international protection of rights and freedoms.²⁴ Poland also applies for membership in the European Union, what in the next future will mean adoption of standards and obligations concerning rights and freedoms in force within the European Union.

One of the possible conclusions from political and legal changes is that they formed a State's system which considerably limited interference of State's organs in the individual's and community's life. As the result of such situation, a noticeable development of self-governing bodies took place, both territorial and other forms of self-government, spontaneous formation of many types of associations, political parties, trade unions and employer's organisations. Moreover, there could be observed wider freedom of individuals. The principle of subsidiarity, although not consolidated expressis verbis in the constitutional norms, is gradually realized as the progress of forming civic society bodies in Poland advances.²⁵

²³ Ratification by Poland on 3 March 1977 of the International Covenant of Civic and Political Rights and gradual adjustment of Polish law to rights and freedoms set forth in the Covenant, considerably contributed to facilitate the consistence of that law with the provisions of the European Convention. See Z. Galicki, „Ratyfikacja ...”, op. cit., p. 35.

²⁴ See A. Łopatka, *Nowe podejście do prawa człowieka i korzystania z nich przez obywateli w Polsce* [New Approach to Human Rights and Exercising them by Polish Citizens], Warszawa 1991, p. 157.

²⁵ See E. Popławska, *Zasada subsydiarności jako zasada polskiego prawa konstytucyjnego* [The Principle of Subsidiarity as a Tenet of Polish Constitutional Law], in this issue.

The mentioned process does not, however, proceed without obstacles, especially taking into account the evolutionary character of system changes. There also exist obstacles resulting from the lack of self-government tradition, the restraints originating from slow mentality change of community and of individuals. Many of life and attitude-forming institutions in the new political conditions are still in course of shaping their models and nature. The fact that there exist over two hundred political parties means that Poland is yet far from being a stabilized political system. The principles of political culture are not yet a commonly binding norm both in relations between state's agencies and other subjects, and also between citizens.²⁶ There still does not exist a satisfactory relation between citizen's interests and their rights, and public interest, which would take into account both States's responsibilities towards citizens, as well as citizen's obligations towards the state.²⁷

On the background of unquestionable achievements in perfecting legal order, two phenomena proving lack of coherence of regulations of rights and freedoms set forth in the constitution and actually existing reality have to be noticed. The first one consists in the practical extension of political and personal freedoms, in spite of the fact that some of the binding constitutional regulations do not correspond to the new legislation and generally speaking to the new reality. On the other hand, the other phenomenon is manifested in the fact that a relative reduction of State's capabilities took place in the sphere of providing citizens with the benefits resulting from social, economic and cultural rights (free medical care, employment, free education, access to cultural goods) to the extent established in still binding constitutional regulations.²⁸ Above mentioned observations entitle to formulate a conclusion concerning the exhaustion of amendment possibilities of hitherto existing constitutional regulations, as well as the one concerning the necessity to establish totally new regulations guaranteeing rights and freedoms. The new regulations should take into account both political changes already accomplished in Poland and assumed direction of State's development, as well as international standards according to requirements of the process of Poland's integration with European Communities.

6. The above mentioned undertaking requires precise definition of sources and essence of international and European standards. It seems justified to include among sources of standards the general principles of law accepted by the international community, as well as principles established in treaties bringing into existence the supranational organizations and communities, and also established in the international

²⁶ Interesting thoughts on this subject were expressed by W. Sokołewicz, „Konstytucjonalizm europejski i przyszła polska konstytucja” [European Constitutionalism and the Prospective Polish Constitution], *Państwo i Prawo*, 1992, N° 8, p. 11 and following.

²⁷ See J. Kurczewski, „Inny kraj, rezurekcja praw w Polsce” [Another Country, Resurrection of Rights in Poland], *Res Publica*, 1990, N° 6, pp. 82-83.

²⁸ See K. Łojewski, „Czy w Polsce istnieje jeszcze Konstytucja?” [Does a Constitution still Exist in Poland?], *Rzeczpospolita*, 4. 02. 1992. The author points out infringements of social rights guaranteed in still binding constitutional regulations.

conventions, and agreements, as well as, to certain degree, models contained in constitutions of states guided by the principles of legality and democracy.²⁹

A separate problem is what values, principles, rights and freedoms should be qualified as international communities' standards. It can be assumed that the objective scope of standards results both from the above mentioned sources as well as from the practice of democratic states and international communities. Thus, there exists a definite complex of standards which should be observed by a state if the state wishes to be recognized as a entitled to belong to the community of democratic and law-observing states. This very remark remains in a close connection with Poland's claim to membership of the European structures, as well as with the duty to adjust internal law, including constitutional regulations in the sphere of rights and freedoms — to the European standards.³⁰ Although the European standards defining the system of values and assigning aims do not impose a political system subordinated to said values and aims, nevertheless a home legislator is obligated to establish lawful and constitutional regulations assuring certain minimum resulting from the essence of the said standards.³¹ A sphere reserved for expressing and guaranteeing sovereign national identity is expanded beyond the limits of this minimum. However, the border lines between these two spheres are not exactly defined.

Poland has already introduced in the Constitution and in the legal order the following fundamental values and principles included in European standards and serving to secure the individual's rights and freedoms: democratic system of State's authorities; the recognition of law as a fundamental regulator of relations between the state and a citizen; political pluralism; observance of the provisions resulting from the European Convention on Protection of Human Rights and Fundamental Freedoms. Thus the internationalisation of guarantee mechanisms has been accomplished conditions for realization of the subsidiarity principle were created.³²

7. The above considerations concern a formal aspect of the issue (putting aside the axiological aspects of functioning of the implemented standards within the State and the society) and the existing state of legislation. Whereas, here we deal with the process concerning both the present State of law, as well as works on the new constitution and the contents of its prospective provisions.

The works of the Constitutional Committee of the National Assembly are in 1995 still in progress, and on the basis of hitherto results it is difficult to draw conclusions as to the form and contents of future constitution provisions and about the degree of

²⁹ Art F of European Union Treaty confirms that the Union recognizes the rights deriving from constitutional traditions of Member States, as general principles of Community's law.

³⁰ According to Art. 68 of the Association Treaty concluded by Poland with the European Communities "the major precondition for Poland's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community".

³¹ See W. Sokolewicz, „Konstytucjonalizm op. cit, p. 4.

³² See Preamble and Art. A on the European Union Treaty. See also N. Emiliou, "Subsidiarity: An Effective Barrier Against 'the Enterprises of Ambition'", *European Law Review*, 1992, N° 43, pp. 383 - 384. On realization of the subsidiarity principle in Poland see: E. Popławska, *Zasada ...*, in the present issue.

compliance with European standards. The orientation of these works may however be evaluated in the context of seven drafts of constitution submitted to the Constitutional Committee acting during the period of the previous parliamentary term.³³ It is the more so justified that the Constitutional Committee of the present (1993 - 1995) parliamentary term decided that these drafts will be taken into account in the course of its work.

An indisputable change in the direction of considering European standards is the abandonning of the class and collectivistic expression of the individual's rights and guaranteeing rights and freedoms as the ones each citizen is entitled to because of human dignity reasons. The drafts also provide for guarantees of human collectivites rights: national, ethnic and linguistic minorities. Only some of the drafts provide for the guarantee of the collective right to participate in managing the enterprise by its employees.

The constitutional drafts lay particular stress on ensuring institutional and procedural guarantees of rights and freedoms. However, this trend doesn't fully find its confirmation in the form and in the contents of the overly declarative and not sufficiently juridical regulations. It seems necessary to introduce to the future Constitution the principle of direct implementation of the constitutional regulations and guaranteeing the right to judicial protection based directly on constitutional norms. This would be an important symptom of adjusting Polish Constitution regulations to the European standards.

An internationalization of guarantee mechanisms on the basis on, among others the European Convention provisions, seems to require first of all: the establishing in the new Constitution of a relation between the internal and the international law, what would enable the individual to vindicate his rights deriving from ratified international standards before Polish common courts of law³⁴ and moreover the Constitutional Tribunal should be granted a cognition as regards the conformity of national legislative and normative acts with international agreements ratified by Poland, conformity of international agreements with the Constitution and competence to examine constitutional complaints concerning the infringement by State's organs of rights and freedoms established in an international agreement ratified by Poland.³⁵ Second: there is a need to establish in the Constitution the procedure providing for

³³ *Komisja Konstytucyjna Zgromadzenia Narodowego. Projekty Konstytucji Rzeczypospolitej Polskiej* [Constitutional Committee of National Assembly. Drafts of the Republic of Poland Constitution], Warszawa 1993.

³⁴ See M. Masternak-Kubiak, „Stosunek prawa międzynarodowego do prawa krajowego w projektach konstytucji RP” [The Relation of International Law to National Law in the Drafts of the Republic of Poland Constitution], *Państwo i Prawo*, 1992, N° 8, p. 85.

³⁵ See M. Łabor-Soroka, *Orzecznictwo Trybunału Konstytucyjnego a ochrona praw człowieka* [Constitutional Tribunal Judicial Decisions and Human Rights Protection], (typescript), p. 2 and following; W. J. Wołpiuk, „Uprawnienia Prezydenta RP z artykułu 28 »Małej Konstytucji«” [The Competences of the President of the Republic of Poland arising from Art. 28 of ”Small Constitution”], (in:) *Mała Konstytucja w procesie przemian ustrojowych w Polsce* [”Small Constitution” in the Process of Political System Transformations in Poland], pod red. M. Kruk, Warszawa 1993, p. 196.

the possibility of transfer to international communities of a part of sovereign state's competences,³⁶ creating basis to applying the guaranteeing mechanism by the European Commission of Human Rights, by the Committee of Ministers of the Council of Europe and by other international bodies engaged in rights and freedoms protection. Third: constitutionalization of the individual's right to submit petitions to appropriate international bodies competent to protect rights and freedoms is needed as well.³⁷

The characteristic feature of constitutional drafts is a quite considerable variety of concepts in the sphere of social, economic and cultural rights. The question is closely connected with the concept of State and with assumed influence of public authority on the extent and manner of guaranteeing social, economic and cultural rights. The drafts reflect many different attitudes, starting from the ones inspired by the liberal doctrine — the State indifferent towards human needs — and finishing with the protective State obliged to secure employment, health care, free education and other benefits.³⁸ The political system founders will have to establish the range of guaranteed rights in compliance with public expectations, as well as to choose the ways to guarantee them, considering international standards and tendencies of social progress in the democratic European countries, where the attentiveness to realize the above mentioned rights is manifested.³⁹

The European Convention's standards referred to by the European Union Treaty does not impose upon the state clearly defined obligations to guarantee social, economic and cultural rights. However, such obligations arise from the European Social Charter, from the Common Declaration of Human Rights and from the International Covenant of Economic, Social and Cultural Rights. The basic acts constituting the European Union nevertheless clearly define the directions of the Member States policies, requiring cohesion between economic growth and high level of employment, social care, health care, increase in quality of education and full development of cultures.

³⁶ Some new European constitutions and amending regulations introduced to older constitutions provide for such procedures. See Art. 93 of the Constitution of the Kingdom of Norway, Art. 79 of the Constitution of Russian Federation, § 5 art. 10 of Swedish Constitutional act. See also W.J. Wołpiuk, „Umowa międzynarodowa jako źródło prawa w Szwecji” [International Agreement as a Source of Law in Sweden], (in:) *Prawo na Zachodzie*, Wrocław-Warszawa-Kraków 1992, p. 208.

³⁷ Emphasizing importance of the European standards does not diminish neither the role nor importance of other international agreements regulating rights and freedoms as well as guarantee and protection mechanisms. A fact that Polish citizens may lodge complaints in case of infringing their rights, is among others a result of Poland joining the Facultative Protocol to the International Covenant on Civic and Political Rights. (Journal of Laws, 1994, № 23, item 80). On problems of rights protection see more P. Daranowski, „Międzynarodowe prawo praw człowieka i ich konstytucyjna ochrona” [International Law of Human Rights and their Constitutional Protection], *Państwo i Prawo*, 1993, № 4, p. 32 and following.

³⁸ The Catholic Church in its social thinking has since a long time paid attention to inseparability of political rights and freedoms with social, economic and cultural rights. An inefficiency of legal and procedural guarantees in the situation of lack of state's care to provide with welfare level capable of meeting social rights was noticed. See Priest F.J. Mazurek, *Prawa człowieka w nauczaniu społecznym Kościoła* [Human Rights in Church Social Teaching], Lublin 1991, pp. 184- 187.

³⁹ On guaranteeing human rights in an all-European meaning of these rights, also in the context of social rights, see W. Sokolewicz, *Konstytucjonalizm ...*, op. cit., pp. 6 - 7 and 10.

Alongside with the requirements of the European standards, there also exists a set of internal factors making impossible drastic limitations of social rights or resignation from the state's guarantees of their realization. These factors were formed by constitutional regulations coming from the former period, they were also formed by social fears evoked by the perspective of forfeiture in many cases illusive, of acquired rights, the appreciation of which in the period of political system transformations has markedly increased.⁴⁰ It seems necessary from this point of view to lay stress on the close connection between political freedoms and social rights, especially in the meaning of feasibility of political freedoms and social rights in the situation of limitation and lack of social rights guarantees.⁴¹ The regulation of social, economic and cultural rights may be expressed in the future constitution, both in the form of general aims/directions of State's activities,⁴² and by the norms enabling their realization by the means of the procedure provided for by law.

There are many other problems arising from the analysis of the constitutional drafts which will have to be considered in the future Constitution. They concern both "traditional" and new rights i.e. consumer rights which are part of European standards, but were so far not provided for in the contents of the drafts. The problems mentioned here are of an exemplary character, but it has to be stressed that in most of drafts the extent of observance of European standards is impressive.

⁴⁰ On controversies concerning social rights in the context of planned constitutional regulations and problems of perceiving these projects by the society, see D. Gomiń, "Human Rights and Freedoms in Constitutions and Draft Constitutions of Central and Eastern Europe", (in:) *Human Rights and Freedoms in New Constitutions in Central and Eastern Europe*, edited by A. Rzepiński, Warszawa 1992, p. 157. For drafted constitutional regulations and problems of perceiving these projects by the society see J. Jończyk, „Spór o socjalne prawa i wolności” [Dispute over Social Rights and Freedoms], (in:) *Rzeczpospolita* dated from 22. 01. 1993. As the result of a social research on "Constitution in Polish citizens' consciousness" carried out by the Public Opinion Research Centre on 18-24 November, 1993 some information was gathered concerning matters which according to the opinion poll responders should be necessarily contained in the new Constitution. The most frequently mentioned matter the constitution should deal with is securing a citizen with the right to work. This issue was assumed to be most vital and it was placed in the highest position in the hierarchy of matters and problems which need to be Constitutionally regulated (87 %). High percentage of the respondents (43 %) paid attention to infringement of social matters resulting in unemployment (22 %) and to deprivation or reduction of old age pensions (17 %). The sign of an interest concerning social problems as a constitutional matter was a postulate to introduce in the constitution regulations deciding about the minimum old age pension (41 %) as well as minimum wage (39 %). See Report *Konstytucja w świadomości Polaków* [Constitution in Polish Citizens' Consciousness], CBOS, Warszawa 1994, pp. 3, 11, 17 and 24.

⁴¹ So J. Zakrzewska, *Spór ...*, op. cit., pp. 149 - 159; Moreover B. Zawadzka pays attention to vagueness of the dividing line between political freedoms and social rights; B. Zawadzka, „Rozwój konstytucyjnych praw społecznych obywateli” [The Development of Citizens' Constitutional Social Rights], *Studia Prawnicze*. 1993. № 2 - 3. nn. 4 - 5.

⁴² See W. Sokolewicz, „Uwagi o projekcie Karty Praw i Wolności” [Comments on the Draft Charter of Rights and Freedoms], *Państwo i Prawo*, 1993, № 4, p. 71; also J. Zakrzewska, *Spór...*, op. cit., pp. 149 - 150.