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# THE IMPACT OF BASIC CONSTITUTIONAL PRINCIPLES OF THE STRUCTURE OF THE REPUBLIC OF POLAND ON THE SECURITY OF THE STATE

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## Abstract

The basic constitutional principles of the political system of the Republic of Poland are of fundamental importance for the functioning of the state both in terms of internal security and international position. They define the elementary ways and content of government, indicating the ideas and goals that should be realized in this process<sup>1</sup>. By regulating the basic organizational scheme of the state, they also refer to the legal position of a person or a citizen. Due to the general nature of the regulations, they enable the legislator to specify the adopted solutions to the extent consistent with the legislator's will. Due to the historical experience, as well as the contemporary, dynamic nature of the threats threatening the proper functioning of the state, ensuring the systemic security of the Republic of Poland must be a fundamental duty of the relevant institutions, operating on the basis of the rules defined by the legislator. It should be noted that the basic constitutional principles of the system do not exhaust the factors influencing the systemic security of the

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<sup>1</sup> L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Wolters Kluwer, Warszawa 2015, p. 57; P. Lubiewski, *Bezpieczeństwo państwa – reminiscencje*, „Zeszyty Naukowe PWSZ im Witelona w Legnicy” 2020, No. 31(4).

state. However, their practical implementation enables the actual application of the mechanisms provided for by the legislator, serving the systemic security and thus the existence of the Republic of Poland.

## **Keywords**

constitution, security, system, principles of the system, systemic security of the Republic of Poland

## Introduction

Basically, every state has a constitution as the highest legal act that defines certain basic principles that determine the system of power and the political nature of the state<sup>2</sup>. They primarily identify the sovereign, regulate the basic forms of government and indicate the types of state organs to which the attribute of power has been assigned.

Since the principles in question refer to the most important matters related to the existence and functioning of the organization of the state, they also emanate into the sphere related to its internal security, the most frequently mentioned components of which are public security, universal security and systemic security<sup>3</sup>.

When analyzing the issues covered by the title of this work, it is necessary to characterize the meaning of the terms “security” and “system”. The above-mentioned terms do not have a coherent definition, which is a consequence of their different perception depending on the fields of science whose representatives try to define the meaning of the mentioned terms. For the purposes of this paper, we can assume, in relation to security, that this term, undoubtedly of an interdisciplinary nature, comes from the Latin “sine cura”, meaning political stability in

the Roman Empire<sup>4</sup>, nowadays, in a general sense, it refers to the state of certainty of existence and survival, functioning and development<sup>5</sup>. Although it appears primarily as an anthropocentric category, it is impossible not to assign it to the institutional system of the state, whose existence without the population is not possible.

Each country has a specific system, in the nomenclature usually coupled with the adjective “political”, formally reflecting the system of government in it. It is based on written law (the main normative act in this field is the Constitution) or tradition, most often referred to as custom or convention. Therefore, it is based on enacted normative acts or customs regulating the basic principles of the organizational scheme of the state<sup>6</sup>.

As we know, the concept of the state implies three elements in the form of: a specific territory, the population inhabiting this territory, and the authority (government) having the character of the highest authority, that is sovereign<sup>7</sup>. Since systemic security is related to the third of the mentioned elements, its preservation is undoubtedly important from the point of view of the state's existence. As a consequence of the above, it is important to ensure the security in question, which should be achieved, among others, by the

<sup>2</sup> Ibidem, p. 57.

<sup>3</sup> Z. Ścibiorek, B. Wiśniewski, R. Kuc, A. Dawidczyk, *Bezpieczeństwo wewnętrzne. Podręcznik akademicki*, Adam Marszałek, Toruń 2015, p. 35; P. Lubiewski, A. Dróżdż, *Zagrożenie – rozważania na gruncie teorii*, „Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy” 2020, 34(1); R. Socha, *Współczesne postrzeganie zagrożenia*, [in:] *Zarządzanie kryzysowe. Teoria, praktyka, konteksty, badania*, ed. J. Stawnicka, B. Wiśniewski, R. Socha (eds), Szczepiwo 2011

<sup>4</sup> K. Wojtaszczyk, A. Materska-Sosnowska (ed.), *Bezpieczeństwo państwa*, Warszawa 2009, p. 11.

<sup>5</sup> R. Zięba, *Bezpieczeństwo międzynarodowe po zimnej wojnie*, Warszawa 2008, p. 15–17.

<sup>6</sup> More: G. Sambor, *Przedmiotowy Zakres bezpieczeństwa ustrojowego Rzeczypospolitej Polskiej*, Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy” 2021, Nr 38(1)/2021, p. 64.

<sup>7</sup> W. Góralczyk, *Prawo międzynarodowe publiczne w zarysie*, Wydawnictwa Prawnicze PWN, Warszawa 2000, p. 123.

practical implementation of fundamental constitutional principles.

Analyzing the issues related to this work, it should be noted that the above-mentioned principles do not exhaust the factors influencing the constitutional security of the Republic of Poland. External factors over which the Polish legislator has no direct influence should also be taken into account. The task of state institutions functioning on the basis of legal regulations concretizing the constitutional principles should be at least the recognition and elimination of real and potential threats to state security, also in the systemic aspect.

## Basic constitutional principles

The Constitution of the Republic of Poland of April 2, 1997 does not exhaustively define the catalog of principles of the state system. However the doctrine of constitutional law distinguishes the following seven most basic principles:

- the sovereignty of the nation,
- independence and sovereignty of the state,
- a democratic state ruled by law,
- civil society,
- separation of powers,
- social market economy,
- inherent human dignity<sup>8</sup>.

Without going into a detailed analysis of the above-mentioned principles, one should refer to their general characteristics relating to the issues covered by the title of this work.

As the first, the doctrine, mentions the principle of the sovereignty of the nation,

the proper functioning of which is necessary to ensure the desired and accepted scheme of state organization. It identifies an entity with the status of a sovereign, which is the source of power in the state. Respect for this principle confers social legitimacy on the state authority, among other things in the field of creating security systems, serving both to ensure the desired existence of the state and the human individual. In the Polish legal and political reality, according to Art. 4 section 1 of the Constitution, the supreme power belongs to the Nation, which exercises it through representatives or directly. It should be noted that in the discussed scope, the term “nation” has a technical meaning, as it applies only to citizens with electoral rights.

The indirect form of government, privileged for practical reasons, consists primarily in guaranteeing a democratic, universally accepted, electoral procedure, devoid of external influences, accompanying the election of the parliament as well as respecting the established, transparent rules of transferring power, also regulated by custom. Moreover, the implementation of this principle requires ensuring conditions guaranteeing the functioning of a political system based on the principle of pluralism<sup>9</sup>. In practice, it is necessary to guarantee the freedom to create and operate political parties whose programs or activities do not interfere with the established principles of the political system. It is also necessary to give the parliament, which is an emanation of the will of the majority of voters, a sufficiently strong position in the structure of state bodies. The depreciation of the position of a collegial

<sup>8</sup> L. Garlicki, *Polskie prawo...*, p. 58, p.59.

<sup>9</sup> More: G. Sambor, *Przedmiotowy Zakres bezpieczeństwa ustrojowego...*, p. 66.

representative body may result, due to its representative character, in social undermining of the prevailing political system of the state. It should be noted that the established preponderance of the representative body should take into account the mechanisms established by the principle of tripartite division of power.

The practical application of direct forms of governance (referendum, legislative initiative) contributes to the real empowerment of the sovereign and formalizes his activity in the field of participation related to law-making, strengthening the ties connecting citizens with the state institution. It also has a positive effect on the practical implementation of the rule of law, which should be understood as the observance of legal norms by both state authorities and citizens<sup>10</sup>, in which an important role is played by: education, media coverage and shaping legal awareness through the judicial activity of common courts.

In order to realistically talk about systemic security, it is necessary that circumstances related to the principle of independence and sovereignty of the state occur. In the Polish political system, it derives expressis verbis from the Constitution of the Republic of Poland, which in Art. 5, one of the basic tasks of the Republic of Poland has established the protection of independence and the inviolability of the state's territory. In presenting the general assumptions of the aforementioned principle, it is necessary to mention the institution of the President of the Republic of Poland, who, being the highest

representative of the Republic of Poland and the guarantor of the continuity of state power, safeguards the sovereignty and security of the state as well as the inviolability and indivisibility of its territory<sup>11</sup>. Entrusting the head of state with the function of guarantor of the continuity of state power obliges the first person in the state to use his/her powers to protect the continuity of the functioning of the state and its constitutional authorities in a situation of threat<sup>12</sup>. The occurrence of the concept of independence means the existence of a separate state entity of the Republic of Poland as well as the integrity of its territory<sup>13</sup>.

Sovereignty, on the other hand, manifests itself in the state's ability to decide exclusively on all matters concerning it and to make all decisions concerning it independently<sup>14</sup>. Lack of implementation of the aforementioned principle in practice means dependence on external actors and may lead to the adoption of solutions petrifying the actual state of affairs, undesirable from the point of view of the independence and sovereignty of the state.

Another fundamental principle affecting the constitutional security of the Republic of Poland is the principle of a democratic state ruled by law. It follows expressis verbis from article 2 of the Constitution of the Republic of Poland, which states that the Republic of Poland is a democratic state of law realizing the principles of social justice. The democratic system, by definition, is based on the affirmation of pluralism, the value of

<sup>10</sup> M. Sczaniecki, *Powszechna historia państwa i prawa*, Wydawnictwo Prawnicze PWN Sp. z o.o., Warszawa 1995, p. 528.

<sup>11</sup> Article 126 ust.1 i 2 of the law of 2 april 1997 – *The Constitution of the Republic of Poland*.

<sup>12</sup> L. Garlicki, *Polskie prawo...*, p. 246.

<sup>13</sup> *Ibidem*, p.62.

<sup>14</sup> *Ibidem*, p.62.

norms, attitudes, beliefs and ideas<sup>15</sup>. The term “the legal state”, which is a product of German legal culture, can be given many meanings. In the broadest aspect, it means the sum of the constitutional features of a modern state, the elements of which are the principles of: separation of powers, the supremacy of the Constitution, the independence of the courts and judges, and the special role of the law as an elementary and universal source of law<sup>16</sup>. Of particular importance is the respect of normative acts by state institutions. The opposite behaviour causes in security of the individual and leads to competence disputes between different types of government, unnecessarily absorbing state institutions and limiting their activity on other areas. Because Article 2 of the Constitution of the Republic of Poland states that the Republic of Poland is a democratic state governed by the rule of law, implementing the principles of social justice, it is necessary to refer to the concept of social justice. Although, following the example of some countries, it refers to the principle of the social state, in Polish conditions shaped by jurisprudence, it is rather an interpretative guideline, meaning that in the case of the possibility of applying a multi-directional interpretation of a given legal provision, one should choose the one that most fully meets the requirements of social justice<sup>17</sup>, the elementary sense of which the public minimizes the possibility of radical social movements. Although the regulation contained in Article 13 of the Constitution

of the Republic of Poland prohibits the existence of political parties and other organizations whose program or activity assumes or allows, among other things, the use of violence to gain power or influence state policy, it is impossible not to notice that the ideas propounded by these organizations nowadays can be easily disseminated via social media, creating a number of potential threats.

The existence of the constitutional security of the Republic of Poland also depends on the existence of the principle of civil society, which has not been expressed *expressis verbis* in the constitution.

The concept of the concept in question is contrasted with the theories and practices of totalitarianism and state authoritarianism. An important feature of the principle in question is to ensure independence from the authority resulting from the fact that members of civil society, equipped with their own means of subsistence, have the ability to meet their needs by organizing themselves into narrower than the state, more specialized associations and communities<sup>18</sup>. Civil society is based on political, economic, professional, cultural, religious, educational, upbringing, caring, hobbyistic and similar organizations independent of the public authority understood subjectively and independently created by citizens<sup>19</sup>. Local government is also an important element.

The organizations in question really contribute to the participation of citizens

<sup>15</sup> A. Bosicki, *Piotr Winczorek jako badacz nauki o państwie. Kilka refleksji na tle wystąpień na konferencji*; scientific editing J. Majchrowski, *Państwo, prawo, polityka w przestrzeni konstytucyjnej*, Liber Warszawa 2007, p. 79.

<sup>16</sup> L. Garlicki, *Polskie prawo konstytucyjne...*, p. 65.

<sup>17</sup> *Ibidem*, p. 69.

<sup>18</sup> P. Winczorek, *Nauka o państwie*, Liber, Warszawa 2011, p. 145.

<sup>19</sup> *Ibidem*, p.146.

in deciding on matters of the state. They facilitate the individual satisfaction of individual and collective needs. Efficient functioning of civil society eliminates the distance between the apparatus of public authority, society and the individual.

Particularly important is the existence of political parties, which, by definition, strive to achieve closer goals, manifested in the acquisition and exercise of state power, and further goals, activating to give the state's activities such a direction that it is consistent with the political ideas of the party<sup>20</sup>. The actual functioning of civil society requires the existence, in addition to political parties, of churches and religious associations that guarantee freedom of religion. The role of the latter manifests primarily in the aspect of guaranteeing the freedom of religion.

The Basic Law in Article 25 formulates the basic rules regarding the functioning of the listed entities. The constitutional order of the Republic of Poland is based on the principle of preservation by public authorities of neutrality in matters of religious, ideological and philosophical beliefs, ensuring the freedom to expression in public life. Relations between the state institution and churches and other religious associations are formed on the basis of respect for their autonomy and mutual independence, as well as cooperation for the good of man and the common good<sup>21</sup>. It should be mentioned that the religious factor has the potential to strengthen the

legitimacy of state power and the ruling system.

The principle of separation of powers and balance of powers is also important from the point of view of systemic security. It defines the relations between particular areas of state activity (law-making, state management, control of compliance with the law) and the bodies that play a key role in these areas<sup>22</sup>. As Montesquieu wrote in 1748 in the work *On the Spirit of Laws*, "in order that power may not be abused, power must restrain power by the natural play of things."<sup>23</sup> Due to the fact that the division, balance and mutual inhibition of state organs can be considered a condition for the existence of a free constitutional order and a premise for the functioning of a state ruled by law, the principle in question affects the existence of other principles be protected from the point of view of the state's political security. In the Polish political system, this principle is defined in Article 10 of the Constitution of the Republic of Poland, which states that: "1) the political system of the Republic of Poland is based on the division and balance of the legislative, executive and judiciary power. 2) Legislative power shall be exercised by the Sejm and the Senate, executive power by the President of the Republic of Poland and the Council of Ministers, and judicial power by the courts and tribunals.

It assumes that relations between individual authorities should be based on

<sup>20</sup> Ibidem, p.152.

<sup>21</sup> J. Wyrembak, *Wykładnia przepisu wyrażającego opis typu przestępstwa a nieświadomość bezprawności czynu*, (ed.) J. Majchrowski. *Państwo. Prawo polityka w przestrzeni konstytucyjnej*, Liber Warszawa 2007, p. 176.

<sup>22</sup> P. Winczorek, *Nauka o państwie*, Liber Warszawa 2011, p.193.

<sup>23</sup> Ibidem, p.193.

a system of mutual brakes, which are to guarantee cooperation and balance covered by the tripartite division<sup>24</sup>.

Reference should be made to specify the scope of the principle in question from the point of view of its impact on the systemic security of the Republic of Poland.

It should be noted that the most commonly accepted concept in democratic countries is the division of power, which also takes place in Polish political conditions. There are, however, constitutional organs of the state, which situate themselves within the scope of their powers outside the tri-partitions of powers. Examples include the institution of the Ombudsman, the National Bank of Poland, the National Broadcasting Council, the Supreme Chamber of control, not to mention state agencies functioning, for example, in the field of science, culture or health care. From the point of view of the political security of the Polish state, the nature of the relationship between the legislative and executive authorities, exercised periodically (in law and in fact) by specific individuals, is important. Personnel changes at the decision-making level of state authorities require ensuring the functioning of mechanisms preventing the occurrence of circumstances detrimental to the efficient functioning of the above-mentioned state authorities. Since the President of the Republic of Poland is the guarantor of the continuity of state power (Article 126 of the Constitution of the Republic of Poland), the physical staffing of the said office is necessary for the proper

functioning of the state. In the case of extraordinary situations resulting in the vacancy of the office of the first person in the state, the Constitution of the Republic of Poland provides for its automatic, temporary appointment by the Marshal of the Sejm or, in the event of his inability to perform the duties of the President of the Republic, by the Marshal of the Senate. In the analyzed case, it can be noted that in the Polish political system, there was no absolute division of the relevant authorities, and the protection of the existence of each of them is necessary to ensure the proper functioning of the state, not only at the level of internal security. Analyzing the issue in question from the point of view of the political security of the Republic of Poland, we can assume that the application of the principle of the tri-partition of powers is not exhaustive and affects only the basic scheme of organization of state institutions, which does not include all of its organs that require protection.

Referring to the principle of inherent human dignity, the legal status of an individual towards the state should be taken into account. The general wording contained in Article 30 of the Constitution, which states that “The inherent and inalienable dignity of man is a source of freedom and rights of man and citizen, should be taken as a basis. It is inviolable, and it is the duty of public authorities to respect and protect it”. Failure to implement the principle in question contributes to the social contestation of state authorities, and thus the systemic order that petrifies their existence.

<sup>24</sup> L. Garlicki, *Polskie prawo konstytucyjne...*, p. 76.



## Conclusions

The contemporary constitutional system of the Republic of Poland was formed in connection with Poland's aspirations to join the structures of the European Union and the North Atlantic Treaty Organization. As a consequence of the above, the established basic principles of the state system theoretically meet the requirements of a democratic state, and the text of the highest legal act of the Republic of Poland has remained stable (in force for over 25 years, it was amended only twice in 2006 and 2009).

Since systemic security, which may be threatened even in a seemingly stable situation, affects the existence of the state, taking the assumptions of system analysis as the starting point, in some approaches three functions of the state can be distinguished: the adaptive function, the regulatory function and the innovative function<sup>25</sup>.

Referring to the issue of the impact of basic constitutional principles on systemic security, the adaptive function should be pointed out, which manifests itself in the pursuit of balance in the face of a potential crisis of the state. The above-mentioned subject of international law should react adaptively to dynamically changing economic conditions, relation of international relations, cultural transformation, changes in the balance of political forces, etc. An excessive level of challenges that the state is unable to meet adaptively may lead to its crisis or even collapse, which happens when the state is unable to adaptively respond to challenges coming<sup>26</sup>.

To counter these threats, basic constitutional principles of the Republic of Poland affecting both the systemic security and other aspects of the functioning of the state.

The mere establishment of the said rules will not ensure the desired security, as it is necessary to implement them in practice, in particular by establishing mechanisms for the protection of political security, manifested primarily through mutual cooperation and coordination of the activities of the relevant state authorities, making their financial capabilities more realistic and universal acceptance of the prevailing system among the society, which maybe limited by contemporary threats.

For example, there are hacker attacks that may affect the correct operation of the IT systems of electoral authorities, resulting in a significant prolongation of the process of announcing the results of the elections which may undermine the integrity of the election in the opinion of the public and thus destabilize the political order of the state. The issue of transparency of political parties and practical instruments for enforcing the obligations imposed on them are also of particular importance. This applies primarily to groups that are the main subjects of the political scene, periodically participating in the exercise of power.

Since systemic security, which includes not only the observance of legal principles, but also applies to the conditions for their creation, the real functioning of the rule of law is necessary, which in the Polish practice of exercising power

<sup>25</sup> P. Winczorek, *Nauka o państwie*, Liber, Warszawa 2011, p. 159.

<sup>26</sup> *Ibidem*, p. 160.

is guaranteed by the proper performance of functions by the State Tribunal and the Constitutional Tribunal.

It should be mentioned that due to the dynamic nature of potential threats, it is impossible to exhaustively indicate the consequences of the impact of the basic constitutional principles of the system on the systemic security of the state.

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