

Jerzy KORNAŚ

State University of Applied Sciences in Nowy Sącz, Poland

THE POLISH POLITICAL TRANSFORMATION IN YEARS 1989-1997

Summary

The issues touched upon in this paper are an analysis of the Polish political transformation as a gradual process of moving from an authoritarian system towards a democratic system. The factors facilitating and stimulating changes in other aspects of social life and encompassing these changes into a legal framework were the amendments to the Constitution of 22nd of July 1952 effected in years 1989-1997 and supplementary legal acts.

Key words: transformation, a political system, a state, a constitution.

TRANSFORMACJA USTROJOWA W POLSCE W LATACH 1989-1997

Streszczenie

Podjęte w artykule problemy stanowią analizę polskiej transformacji jako stopniowego procesu przechodzenia od ustroju autorytarnego do demokratycznego. Czynnikiem sprzyjającym, a jednocześnie stymulującym zmiany w innych sferach życia społecznego i ujmującym je w ustrojowe ramy prawne były przeprowadzane w latach 1989-1997 nowelizacje konstytucji z 22 lipca 1952 roku i uzupełniające ją ustawy.

Słowa kluczowe: transformacja, ustrój polityczny, państwo, konstytucja.

Introduction

In the political and historical science literature the transformations in political life of Poland following signing of the Round Table agreements are customarily referred to as the political transformation or democratization¹. The second term emphasizes the direction of transformation indicating that it was gradual shift from an authoritarian towards a democratic state. The Polish political transformation consisted of establishing an entire sequence of ideological, political and formal-legislative events initiated by questioning the legitimacy of the prior mono-centric political system of People's Republic of Poland as well as reconstructing on its institutional foundations a democratic system based on the principles of: national sovereignty, separation of power, political pluralism and free elections. The area paving the way for more meaningful and deeper systemic transformation was the reforms of state's constitutional order presenting a factual opportunity of restoring pluralistic political arrangement of the society which is a prerequisite for conducting democratic elections of a representative form of government and forming of a civil society. There is a discrepancy regarding the beginning of Polish political transformation in the works discussing this issue. The opinions in the subject literature analyzing

¹ Compare: *System polityczny RP*, A. Antoszewski, 2012, Warszawa: Wydawnictwo Naukowe PWN, pp. 17-46; „Proces kształtowania demokratycznego systemu politycznego RP”, M. Gulczyński, 2009, in: D. Waniek, M. Gulczyński (ed.), *System polityczny Rzeczypospolitej Polskiej*, Warszawa: Almamater WSE, pp. 22-42; *Teoria polityki*, Z. Blok, 1998, Poznań: WN UAM, p. 106.

the process of democratization of Poland are divided. Not all authors engaging the problem agree with the statement that the transformation was initiated by the Round Table agreements or, in a formal and legal sense, by the amendment to the constitution adopted on 7th of April 1989. The beginning of moving away from the system led by a single, hegemonic party arises much controversy and makes adopting a singular time-frame impossible². The issue is dominated by historical narrations which adopt either the contract elections of 4th of June 1989, the constitutional amendment of the December 1989 or swearing Lech Wałęsa into the office the President of the RP in the December of 1990 as the beginning of the transformation. Other opinions proclaim that the event which launched political transformation was the first free parliamentary elections of 27th of October 1991 or adopting the so called "Small Constitution" on 17th of October 1992. The unique opinion in this regard is being represented by exceptional scholars such as Andrzej Walicki, an expert on history of politics, and Zbigniew Pełczyński, a professor of political philosophy of Oxford. They claim that departure from the communist system begun as early as in 1956 and that this process progressed evolutionarily³.

The issue regarding the exact time the transformation concluded is also hotly debated. Political scientists frequently rise doubts whether the process of political transformation concludes with adopting the new democratic constitution⁴. In turn constitutionalists, understandably, consider this fact as the most significant political event of the entire process of transformation. Assuming that defining a new political system of the state through adopting the basic law is an institutionally binding fact of the political life which imparts a specific framework upon the political system adopting a constitution appears to be a proper criterion for establishing the boundaries defining the system transformation process. Thus for the purpose of further reflection we shall adopt that the process of political transformation in Poland proceeded in years 1989-1997 and that adoption of the new Constitution of the Republic of Poland on 2nd of April 1997 was a conclusion of the fundamental stage of Polish political transformation. The claim that the period of political transformation closes on 1st of January 1999, the date when the set of acts of 1998 introducing new administrative division and two further levels of territorial self-government – county and voivodship levels, came into effect, is also valid. However, it is prudent to emphasize that the self-government reform has been enabled by the new constitution which in art. 164, section 2 accepts the possibility of establishing "other regional and local self-government units" on the basis of an act. The underlying goal of the reflections presented in this paper shall be analysis of the progress of political and legal changes which transformed an authoritarian state into a democratic state legally sanctioned by the Constitution of the Republic of Poland adopted on 2nd of April 1997.

1. The gradual process of transformation of Polish constitutional order

Not willing to engage in polemics with other political science experts and historians we adopt that two distinct stages can be distinguished in the process of shaping of the Polish democratic system following year 1989: the first stage, initiated by the Round Table agreements resulting

² See: „Okrągły Stół w interpretacjach historyków i nie tylko...”, R. Stobiecki, 2011, in: J. Kornaś (ed.), *Problemy polskiej transformacji*, Kielce: Wydawnictwo WSEiP w Kielcach, pp. 31-45.

³ *Polskie zmagania z wolnością*, A. Walicki, 2000, Kraków: Universitas, pp. 113-123; *Polska droga od komunizmu. Refleksje nad historią i polityką 1956-1980*, Z. Pełczyński, 2006, Warszawa: Wydawnictwo Naukowe Scholar, pp. 81-175.

⁴ Compare: *Polityka w Polsce w latach 90. Wybrane problemy*, A. Antoszewski, R. Herbut (red.), 1998, Wrocław: UWr., p. 6; „Transformacja polskiego porządku konstytucyjnego 1989-1997”, M. Kruk, 1998, in: W. Sokolewicz (ed.), *Zasady podstawowe polskiej konstytucji*, Warszawa: Wydawnictwo Sejmowe, p. 57.

in amendments and legal changes in the state constitutional system which lasted until the so called "Small Constitution" was adopted in 1992 and the second stage – the actions of the state mechanisms based on the Small Constitution concluded with adoption of the new Constitution of the Republic of Poland, adopted by the National Assembly on 2nd of April 1997 and confirmed through a plebiscite on 25th of May 1997, which entered into force on 17th October 1997.

The constitution amendment effected immediately following conclusion of the proceedings of the Round Table did not constitute a complete draft of the premises of future political system of the state. The constitutional amendment of 7th of April 1989 was the first modification which initiated the process of political transformation of the Constitution of People's Republic of Poland in 1952 (Dz.U. of 8th of April 1989, No. 19, item 101)⁵. This amendment corrected the system of primary state authorities and resulted in significant changes in the mechanism of exercising state power. Furthermore, the office of the president has been reintroduced and replaced the existing collegial State Council; the Senate has been reinstated as the second chamber of the parliament; election system has been modified and the systemic guarantees of judicial independence were expanded. As a result of these transformations the mutual relationships between primary state authorities changed. The prior formal supremacy of the legislative power over the remaining powers was replaced by a network of inter-dependencies similar to the separation of power by introducing certain mechanisms of mutual balance. The essence of these changes was a gradual dismantling of the existing system of ruling based on the principle of uniformity of state power⁶ as well as establishing a democratic system-wide order along with an appropriate distribution and balance of power between the primary public authorities, political pluralism with the right to opposition and the political creation of authorities dependant on the support received in the so called "free elections".

The April amendment adopted the concept of a president-arbiter with competences which enabled the president to coordinate actions and granted the president the right to veto acts of the parliament and the right to halt operations of other state authorities. The office of the president was to be a guarantee of maintaining the balance of power and the ability to intervene in exceptional circumstances when the systemic foundations of the state were threatened. Furthermore, a provision has been introduced stipulating that the President is the highest-ranked representative of the Polish state and his role consists of: ensuring that the constitution is being adhered to, protecting sovereignty and safety of the state, inviolability of the borders and ensuring that international political and military alliances are upheld. The president also received the right to legislative initiative and could dissolve both chambers of the parliament prematurely if the parliament was unable to adopt budget or adopted resolutions making execution of president's powers impossible. The amendment also made the president the commander-in-chief of military forces. Through the April amendments to the constitution the agreements of the Round table, which reserved the office of the President for general Jaruzelski as a guarantor of the principles of the factual socialism system and the evolutionary path of its transformation, were legalized. Following the

⁵ See: „Transformacja polskiego porządku konstytucyjnego 1989-1997”, M. Kruk, 1998, in: W. Sokolewicz (ed.), *Zasady podstawowe polskiej konstytucji*, Warszawa: Wydawnictwo Sejmowe, pp. 57-64. Compare: „Transformacja ustrojowa w Polsce w latach 1989-1997 (w kierunku społeczeństwa obywatelskiego)”, W. Wic, 1999, in: J. Kornaś, M. Banach (ed.), *Konstytucja Rzeczypospolitej Polskiej. Spór o kształt ustroju*, Kraków: Wydawnictwo AE, pp. 7-13.

⁶ The essence was the formal, constitutional primacy of the legislative power over the remaining powers, the leading role of the communist party in the alliance with the remaining factions, consensual elections (instead of free elections) and lack of opposition. See: „Parlament w ustroju Polski Ludowej (1944-1989) na tle pozycji parlamentu w państwach realnego socjalizmu”, W. Skrzydło, 1997, in: A. Gwiżdż (ed.), *Założenia ustrojowe, struktura i funkcjonowanie parlamentu*, Warszawa: Wydawnictwo Sejmowe, p. 57.

April election and the December amendment to the constitution, dissolution of Polish United Workers' Party (PUWP) and, primarily, election of Lech Wałęsa to the office of the President of the Republic of Poland, this compromise turned to be unnecessary.

Restoration of the second chamber of Polish parliament was a consequence of adopting the concept of "contractual" elections and, in the political understanding, constituted a concession of the government to the opposition (Sarnecki, 1995, p. 8). Electing Lech Wałęsa through free universal elections⁷ primarily enabled the governmental part of the Round Table to verify the expected extent of electoral support in practice without formally hazarding loss of power⁸. Political premises laid down foundations for reinstating the Senate; existence of the Senate was not an indispensable prerequisite for democratic functioning of the parliament. In the light of the April amendment the Senate has been established as an independent state body which besides the Sejm was a state-wide representative body consisting of representatives of voivodeships. Duties of the Senate were lowly because senators were primarily limited to correcting drafts of the Sejm acts. Under the provisions of the amended constitution the Senate was neither a chamber with status higher than the parliament nor even a chamber equal to the Sejm. The legislative power was primarily focused in the Sejm because acts and resolutions of the Sejm were always of constitutive character.

The April amendment also changed the legislative position of the Sejm. It has been reinforced because the power of issuing decree-laws, prior to amendment held by the State Council and, later, the president, has been removed. Furthermore the session mode for parliament deliberations has been abolished in favour of the Sejm operating in perpetuity. The Sejm acquired the right to participate in ratification of international agreements, although restricted to ratifying only the agreements which resulted in a significant financial burden or changes in legislation.

The April amendment strengthened position of courts and judges within the system. The National Council of the Judiciary, the primary tasks of which consisted of giving an opinion on candidates for the position of a judge who were to be later appointed by the President, has been established. Judges became irremovable from office with the exception of the cases stipulated in the legislation. Further regulations concerning the judiciary system were effected through the act of 20th of December 1989. At that time various restrictions have been introduced incl. the prohibition on membership in a political party and engaging in political activity. Furthermore the independence of judges in making judicial decisions has been expanded.

More thorough systemic transformations of PRoP were effected through the constitution amendment of 29th of December 1989, commonly referred to as the "December amendment" (Dz.U. of 31st of December 1989, No. 75, item 444). This amendment was an evidence of the radicalization of the anticommunist sentiments in Poland, the demanding attitude of the existing opposition resulting from the success in the June 1989 elections and the departure towards total breaking off from the existing political and economical system. The Contractual Sejm, in which the contemporary ruling powers of People's Republic of Poland held 65% of mandates and citizens' committees of "Solidarność" held 35% of mandates, despite the initial difficulties with selecting and appointing the first non-communist government of Tadeusz Mazowiecki, accelerated further constitutional changes. From June to December of 1989 a new political

⁷ The free Senatorial elections postulate has been submitted by Aleksander Kwaśniewski during the Round Table debate. See: *Jak to się stało*, M.F. Rakowski, 1991, Warszawa: Wydawnictwo "BGW", p. 203.

⁸ While not receiving a single mandate in the senatorial elections the government coalition did not lose the National Assembly majority. See: *Wybory czerwcowe 1989*, 1994, A. Małkiewicz, Warszawa: Instytut Studiów Politycznych PAN, p. 24.

situation emerged in which a number of constitutional provisions fundamental for the PRoP political system became irrelevant. These were primarily art. 3 regarding "the leading role of PUWP in society" and the provisions regarding PUWP's alliance with the United People's Party and Democratic Faction. Following the contract elections both these parties broke the alliance with PUWP and entered into an arrangement with Citizens' Parliamentary Club and thus, in arrangement with PUWP, created a Sejm majority capable of electing the government. The December amendment entered into the constitution a number of new regulations incl. new political system principles: sovereignty of nation (art. 2), political pluralism (art. 4), freedom of economic activity (art. 6), respect and protection of property (art. 7). Furthermore the amendment severely deteriorated the systemic foundations of Polish statehood by annulling the ideological declarations of the constitution of 1952. The amendment introduced into the system the principle of the democratic state governed by the rule of law by claiming that "the Republic of Poland is a democratic state governed by the rule of law which embodies the principles of social justice". The catalogue of the constitutional system state guarantees, which constitute foundation of a democratic state governed by the rule of law, primarily includes: the national sovereignty principle, the national representation principle, separation of powers principle, the autonomy and independence of courts principle, an expansive system of human and citizen rights and freedoms as well as a system of supervisory bodies etc.⁹ A democratic state governed by the rule of law guarantees and respects the rule of law and thus the principle of the state authorities adhering to the competences determined by legal regulations as well as the citizens' adherence to the law.

A systemic change of a historical character was the return to the traditional definition of a sovereign in a state (the constitution of 3rd of May 1791 and the constitution of 17th of March 1921). The existing constitution provision claiming that the power lies with "the working people of towns and villages" has been replaced with the following provision "In the Republic of Poland the superior authority is held by the people". While the previous provision determined the class character of the state on one hand and emphasized the specificity of the state governed by the dictatorship of the proletariat on the other, the new wording returned the agency of the superior authority to the people. In the light of the experiences of the European constitutionalism "the people" are interpreted as a political category – a community of citizens equal under law and not as an ethnic category. It means that "the people", as a sovereign agent of the state power, consist of all citizens of the state regardless of their nationality, views, creed or race.

Restoration of the name and coats of arms of the nation from the interwar period facilitated connecting with the tradition and the new understanding of democracy. The name "the Republic of Poland" was decisive for the republican form of the Polish state. The symbolic gesture of departing from PRoP was restoration of the traditional Polish coat of arms (the image of a crowned white eagle). These last corrections, symbolic in character, were aimed at emphasizing restoration of full sovereignty of the Polish nation.

Another step in changing the Polish system was the amendment to the constitution effected on 8th of March 1990 concerning introduction of a new form of a local authority replacing field national councils (Dz.U. 19th of March 1990, no. 16, item 94)¹⁰. It laid foundations for formation of a new model of a territorial self-government and on the basis of this amendment the

⁹ Compare: *Odpowiedzialność konstytucyjna*, M. Pietrzak, 1992, Warszawa: Wydawnictwo PWN, p. 8. More in: „Zasada demokratycznego państwa prawnego”, M. Wyrzykowski, 1998, in: *Zasady podstawowe polskiej konstytucji*, Warszawa: Wydawnictwo Sejmowe, pp. 65-91.

¹⁰ This act was amended on 11th of April 1990 and concerned redevelopment of field administration (Dz.U. of 7th of May 1990, No. 29, item 171).

elections which reinstated municipal self-governments were held. However, it was not a complex legal regulation related to the simultaneous territorial reform of the state. In the September of 1990 a regulation regarding electing the President of the Republic of Poland through direct universal suffrage was introduced into the constitution (Dz.U. of 27th of September 1990, No. 67, item 397).

The most important legal and political system regulations discussed herein-above introduced a new systemic order – still far from expectations of the proponents of radical departure from the previous system. The constitutional mechanism corrected through amendments turned to be ineffective in numerous instances. The President of the RP, despite holding wide executive powers, was not a factual head of the executive authority. While formally holding extensive executive powers, the President did not enjoy support in the form of own political party in the Sejm, could not rule independently but was able to hamper operations of the government and the parliament through refusing to sign acts and regulations. The government was politically responsible before the Sejm which could dissolve the government in case of losing the parliamentary majority. Being the legislative power the Sejm, despite lacking executive power, could restrict work and activities of the government by not adopting acts or by prolonging the process of adopting acts. In turn the Senate could stop and modify the acts adopted by the Sejm but it was the Sejm which decided on the ultimate form of a parliamentary act. Within the entirety of this system of separation of powers the government was the weakest link among the primary state authorities. Following introduction of the aforementioned changes the wording of the constitution became largely inconsistent and internally contradictory. Preparing a new constitution comprehensively regulating constitutional system of the state became a necessity. In the opinion of contemporary politicians due to political reasons the contractual Sejm was not legitimate enough to adopt a new constitution although the works on such constitution had already started.

The first free parliamentary elections were held on 27th of October 1991 and elected a politically dispersed and fragmented Sejm. This Sejm consisted of 18 factions¹¹ with wildly different views on the new political system and thus negotiating a constitutional compromise turned to be impossible. However, on 23rd of April 1992 it was possible to adopt The Constitutional Act on the Procedure for Preparing and Enacting a Constitution for the Republic of Poland and to adopt the temporary Constitution of 17th of October 1992 regarding mutual relations between the legislative power and the executive power of the Republic of Poland as well as the act on territorial self-governments referred to as the "Small Constitution" (Dz.U. of 23rd of November 1992, No. 84, item 426). This constitution was a *suis generis* compromise between the parliamentary majority and the President of the RP and concerned solely appointing, dismissing and competences of three primary state authorities: the Parliament (the Sejm and the Senate), the President and the Council of Ministers as well as resolutions and provisions regarding local self-governments.

2. The structure of authorities in provisions of the "Small Constitution"

As a result of the regulations of the „October" act the power of the Sejm was slightly limited. The Sejm lost its monopoly as the sole legislative power as this power could now be potentially granted to the Council of Ministers to the extent and for the period defined by the Sejm. Upon the motion of the government the Sejm could authorize the Council of Ministers on the grounds of the act adopted by an absolute majority of votes to issue legislative decrees. However, these decrees could not pertain to the most important issues reserved for the constitution as the superior legal act. In such case the Sejm surrendered the right to veto the decrees issued by the government

¹¹ See: "Krótki" Sejm, J.J. Wiatr, 1993, Warszawa: "BGW", pp. 19-26.

consistently with such act. The Sejm also could not prolong legislative work indefinitely because only the government held the right to submit drafts of the acts through the urgent procedure which shortened the duration of legislative work. It also made submitting drafts not previously presented to an appropriate Sejm commission during plenary sessions impossible.

The executive power has been noticeably strengthened. The President of the Republic of Poland elected in universal elections for a term of 5 years served as a head of state and had a general control in the field of international relations and state security. The President ratified and terminated international agreements and was commander-in-chief of military forces. Furthermore, the office of president has retained a number of other competences from the previous period. The President held the legislative initiative right, the right to summon meetings of the Council of Ministers and the right to receive from the Prime Minister the information regarding the basic problems in operations of the Council of Ministers, the right to submit motions for ensuring liability before the the State Tribunal and motions regarding performance of an audit by the Supreme Audit Office. The President also retained competences regarding appointing and dismissing President of the Supreme Administrative Court and President of the Supreme Court. The President also had some measure of influence over appointment of three offices in the government: the foreign affairs minister, the national defence minister and the internal affairs minister¹². President also retained his prerogatives regarding legislation. Each act was required to be signed by the President within 30 days. The President had the right to refuse signing an act and the Sejm could dismiss presidential veto only by a 2/3 majority of votes. In a fragmented parliament such legal instrument in the hands of the head of state was an effective tool for obstructing legislation. While resigning from the veto right the President could also refer an act to the Constitutional Tribunal for assessment regarding consistency of the act with the constitution.

Due to new regulations the government, until now hampered by waiting for adoption of acts, became more active in comparison to the Sejm. For instance, the government achieved e.g. a sense of security owing to a constructive vote of non-confidence as well as the capability of issuing legislative decrees. The vote of non-confidence motion could be submitted by at least 46 members of parliament and could be voted on no earlier than after lapse of 7 days. If the motion was rejected the opposition had to wait at least three months and present a list of signatures of at least 115 members of the parliament to re-submit it. The Council of the Ministers was also responsible for presenting a draft of the State Budget Act to the Sejm. Following adoption of the State Budget Act the Council was obliged to submit the report regarding its implementation. The Sejm was responsible for assessing implementation of the act and adopting the act regarding the vote of approval. In case of not receiving the vote of approval the Council of Ministers was forced to resign. Furthermore the constitutional act imposed on the Council of Ministers the obligation to make decisions in all cases of state policy which were not reserved under the Constitution or other act for the President of the RP or other body of state administration or self-government. The "Small Constitution" included a rather complicated procedure for forming composition of the government. The adopted solutions were aimed at political stabilization of this state power. The constitution granted the government-forming initiative to the President. Under these regulations the President appointed the Prime Minister of the Government and the Sejm granted the vote of confidence. In case of the Government not receiving the vote of confidence four other additional

¹² The President of the Council of Ministers submits the motion concerning appointing Ministers of Foreign Affairs, National Defence and Internal Affairs after consulting with the President (Dz.U. 23rd of November 1992, No. 84, item 426, art. 61).

variants of appointing the government were projected. Therefore if the government appointed by the President did not receive the vote of confidence from the Sejm the members of the parliament had to appoint the cabinet themselves and get it approved by an absolute majority of votes. In such case the President had no control and his role boiled down to swearing in the government selected in this manner. If the Sejm was unable to form a government the Prime Minister and Ministers were once again appointed by the President and their appointment was confirmed by the Sejm, this time by a simple majority of votes. Thus the President had the opportunity to force through "his" government by a simple majority of votes. However, if forming the government was still impossible, the Sejm appointed and approved the government by a simple majority of votes. If the government proved to be impossible to form even through such variant of the appointment procedure the President dissolved the Sejm but was obliged to form the so called "presidential" government for a 6 month term within 14 days.

In practice the balance of power mechanisms adopted under the constitutional act meant that none of the state authorities would be strong individually and when in conflict with others. They could be, in turn, effective when cooperating with the remaining authorities. The Sejm in possession of a concordant majority could appoint the government and the President had little to say in this matter. In cooperation with the Council of Ministers the President held sizable power but in the case of coming into conflict with the Prime Minister and the government the role of the President as an executive authority diminished¹³. In turn, the government acting in cooperation with the President could become more independent of the parliament whereas when in conflict with the President the government was dependant on the Sejm.

Three alterations in certain provisions of the "Small Constitution" were made during the period the "Small Constitution" remained in effect. The first change was effected on 17th of March 1995 (Dz.U. 11th of April 1995, No. 38, item 184) with the goal of removing the inter-term recess in the instance of dissolution of the Sejm, determining the regulations for managing elections more precisely and applying the restrictions for the urgent submission of drafts of acts by the government. Owing to the disputes regarding interpretation of the possibility of dissolving the Sejm before the lapse of term as a result of not adopting the state budget within the deadline stipulated in the constitution as well as the disputes regarding signing of the budget by the president a second amendment to the constitution (Dz.U. 22nd of December 1995, No. 150, item 729) was adopted on 9th of November 1995 which made the provisions regarding these matters included in the "Small Constitution" more precise. The third change was introduced on 21st of June 1996 (Dz.U. 30th of August 1996, No. 106, item 488) and consisted of defining a new status for ministers as well as expanding powers of the President of the Council of Ministers in regards to reforming structure of the government. This amendment was related to the contemporary reform of the Centre.

The "Small Constitution" was a temporary document because effecting a comprehensive transformation of the state political system by way of amending the constitution did not amount to achieving the primary goal – adopting the new Basic Law. The actions taken were aimed not only at breaking off from the previous political system but primarily regarded establishing a new system which would sanction the already effected political, economical and social changes and

¹³ Polish cohabitation of years 1993-1995 indicated that in such circumstances the President could only veto acts and "act on the edge of law". See: *Pierwsze lata III Rzeczypospolitej 1989-1995*, A. Dudek, 1997, Kraków: GEO, pp. 310-317. Compare: „Instytucje władzy ustawodawczej i wykonawczej”, A. Antoszewski, 1998, in: A. Antoszewski, R. Herbut (ed.), *Polityka w Polsce w latach 90. Wybrane problemy*, Wrocław: Wydawnictwo UWr., pp. 112-114

would simultaneously be open in legal and political terms to further civilizational changes including inclusion of Poland into NATO and structures of the European Union¹⁴. Effecting such changes required developing and adopting a new constitution, even more so due to the fact of Poland being a country which was overtaken in this field by other central and western Europe states despite initiating systemic transformation earlier.

3. The political system of the Republic of Poland in the proceeded constitution drafts of the Constitutional Committee of the National Assembly (CCNA)

The first attempt at developing the new Basic Law was initiated on 7th of December 1989 by the Sejm of tenth term and the Senate of the first term appointing two separate constitutional commissions. Challenging the democratic legitimacy of the Sejm of tenth term, the so called "contract" Sejm, to adopt the new Polish state constitution and dissolution of the Sejm in 1991 erased the possibility of developing and adopting the new Basic Law¹⁵. However, work of the parliament resulted in constitution drafts developed by constitutional commissions of the Sejm and the Senate as well as drafts by various political parties and independent drafts¹⁶. Certain members of parliament, closely following the way in which the political situation in the Polish parliament developed, have already assumed that the constitutional drafts will not be an object of voting during sessions of the Sejm of tenth term or even the following Sejm¹⁷. Despite these predictions and political fragmentation of the parliament selected in 1991 the Sejm of first term and the Senate of the second term made "a second attempt" by adopting two acts necessary for the transition period until the new Constitution of the Republic of Poland could be adopted: the act of 23rd of April 1992 on the procedure for drafting and adopting the Constitution of the Republic of Poland¹⁸ in which it has been determined that the new constitution will be adopted by the National Assembly and enacted by way of referendum by people of Poland as well as the aforementioned "Small Constitution" of 17th of October 1992. Eleven drafts of constitution were submitted in the October of 1992 to the CCNA, seven of which corresponded with the premises of the act on the procedure for drafting the constitution¹⁹. As a result of the President of RP rejecting the vote of non-confidence towards the government of Hanna Suchocka and the resulting necessity of dissolving yet another parliament on 31st of May 1993 the works on drafting and adopting constitution were also interrupted. The decision of the President of RP formally erased the possibility of adopting the constitution but it were the internal disagreements and political fragmentation of the parliament which were decisive for drafting and adopting the new Basic Law by the Sejm of first term and the Senate of the second term.

As a result of this combination of political circumstances the issue of drafting and adopting the Constitution of the Republic of Poland was left to the Sejm of the second term and the Senate of the third term. The parliament of the RP elected on 19th of September 1993 made the decision

¹⁴ Compare: „Dylematy konsolidacji demokratycznej w Polsce po roku 1989”, J. Szczupaczyński, 2006, in: M. Chałubiński (ed.), *Transformacje systemowe w Polsce i krajach postkomunistycznych. Studia i rozprawy*, Pułtusk: Akademia Humanistyczna im. Aleksandra Gieysztor, pp. 192-193.

¹⁵ Compare: *Prawo i polityka w czasach przemian*, P. Winczorek, 1995, Warszawa: Wydawnictwo Sejmowe, p. 55.

¹⁶ See: *Projekty konstytucyjne 1989-1991*, M. Kallas (comp.), 1992, Warszawa: Wydawnictwo Sejmowe.

¹⁷ See: „Obywatel nie chce być tolerowany. Karol Modzelewski o senackim projekcie konstytucji”, *Rzeczpospolita* 31st of May 1991.

¹⁸ This act was amended on 22nd of April 1994 with the goal of enabling submitting civic drafts of the constitution. See: Dz.U. 22nd of April 1994, No. 61, item 251.

¹⁹ Compare: *Ustrój konstytucyjny Rzeczypospolitej Polskiej z tekstem Konstytucji z 2 kwietnia 1997 r.*, J. Majchrowski, P. Winczorek, 1998, Warszawa: Hortpress, p. 12.

regarding continuing the work aimed at drafting a uniform text of the constitution on 19th of September 1993. Following launch of operations of the new Constitutional Committee of the National Assembly (CCNA) and amendment to the act of 23rd of April 1992 on the procedure for drafting and adopting constitution seven new drafts of the constitution meeting statutory requirements were taken into consideration on 4th of September 1994²⁰.

All drafts of the constitution were a complex and thoroughly developed concepts of a state system. The drafts included resolutions concerning the shape of future political system, civic rights and freedoms as well as sources of law described in individual chapters. Chapters and articles regarding the form and regulations of the political system of the state, structure of the state authority bodies and the concepts regarding the human, citizen and civic self-government were the most significant for restoration of the vision of the Polish state.

All drafts included the provision stipulating that "The Republic of Poland is a democratic state governed by the rule of law" with the exception of the draft submitted by the parliamentary club of Confederation of Independent Poland (CIP) which did not indicate this fact directly²¹. Despite the lack of such phrase in the case of the draft submitted by the Senate certain constitutionalists decreed that the draft accepts the principle of a democratic state governed by the rule of law by indicating the provision regarding primacy of the constitution included in the third chapter of the draft. The civic draft which included in its preamble a phrase questioning legal positivism also aroused doubts in this regard²². It was so because referring to natural laws was suggestive of ideological leanings of law which undermined and challenged the very essence of a state governed by the rule of law based solely on the positive law²³.

Apart from including the ideal of "a democratic state governed by the rule of law" two drafts of the constitution, the drafts submitted by Democratic Left Alliance and Polish People's Party/Labour United, expanded this phrase by the imperative of combining it with the obligation to realize the principles of social justice²⁴. It meant that both drafts regarding the new political system favoured not only the democratic form of the political system of public authorities and rule of law but also the social character of the state rendering aid to the citizens²⁵. According to supporters of the liberal concept of the state the entry indicating the need for the state to realize

²⁰ These were the following drafts of the constitution: the draft of the Constitutional Committee of the Senate of the first term of 19th of March 1993; the draft of the parliamentary club of Polish People's Party, Labour United, German Minority, Pensioners and Disability Pensioners Party "Nadzieja" and unaffiliated members of parliament of 28th of April 1993; the draft of Members of Parliament and Senators of the parliamentary club of Democratic Union of 29th of April 1993; the draft of parliamentary club of Confederation of Independent Poland of 30th of April 1993; the draft of Members of Parliament and Senators of Democratic Left Alliance of 5th of May 1994; the draft of the President of the Republic of Poland of 6th of May 1994 and citizen's draft of the Constitution of the Republic of Poland of 3rd of September 1994. See: *Projekty Konstytucji 1993-1997* (cz. 1), R. Chruściak (comp.), 1997, Warszawa: Wydawnictwo Sejmowe, pp. 43-330.

²¹ See: „Państwo prawne w warunkach zmian zasadniczych systemu prawa RP”, K. Działocha, 1992, *Państwo i Prawo*, 1, pp. 13-27; „Z zagadnień pojęcia i ideologii demokratycznego państwa prawnego”, J. Wróblewski, 1990, *Państwo i Prawo*, 6, pp. 3-16.

²² The preamble reads: "Willing to establish Poland strengthened by wisdom, work and patriotism of its citizens, under care of the laws developed by citizens and based on natural law, we hereby adopt this Constitution of the Third Republic of Poland in the name of God." See: „Obywatelski projekt konstytucji RP”, in: R. Chruściak (comp.), *Projekty Konstytucji 1993-1997* (part 1), 1997, Warszawa: Wydawnictwo Sejmowe, p. 294.

²³ Compare: „Totalitarne ciagoty. Projekt konstytucji NSZZ „Solidarność””, K. Patora, 1995, *Dziś. Przegląd Społeczny*, 4, p. 116.

²⁴ Draft of the constitution submitted by Left Democratic Alliance stipulates in art.1: "The Republic of Poland is a democratic state governed by the rule of law which actualizes principles of social justice". In turn, the draft of the constitution submitted by Polish People's Party/Labour United states in chapter I, art. 1 that: "the Republic of Poland is a state governed by the rule of law and following principles of social justice". See: *Projekty Konstytucji 1993-1997* (cz. 1), R. Chruściak (comp.), 1997, Warszawa: Wydawnictwo Sejmowe, pp. 91, 188.

²⁵ Uzasadnienie projektu konstytucji SLD in: *Ibidem*, p. 135.

the principles of social justice, unlike the declared intentions of the designers of the draft, served to obfuscate acceptance of the primacy of the society over an individual²⁶. Thus the customary dispute regarding the obligations of the state regarding economy and society, ongoing in the field of state practice and concept, which is still impossible to resolve in a manner satisfactory to everyone, reared its ugly head. However, it must be noted that the efforts of the public authorities aimed at achieving social justice make the state political system described in the constitutional provisions more humane.

The principles of sovereignty, representation of citizens and separation of powers are of essential importance for democratic systemic solutions of the state. All drafts of the constitution indicated the people, understood as the community and collective of citizens, as the source and subject of power. Similarly, the principle of representation was uniformly reflected in the acceptance of the representation system, referendum and the concept of the non-imperative mandate²⁷.

The separation of powers principle was approved of by all drafts of the constitution with the exception of the draft submitted by Confederation of Independent Poland which in terms of structure of state authorities proposed the principle of the uniformity of power expressed as recognizing the Sejm as the highest body of public authority²⁸. In the drafts which utilized the principle of tripartition of power the competences of individual bodies of state authorities were defined differently.

From among seven drafts of the constitution only three drafts explicitly alluded to the parliament-cabinet form²⁹ with two of the drafts being in favour of a single-chamber parliament³⁰. In the Confederacy, civic, senate and presidential drafts the number of members of parliament was reduced to 444. Among the parliament-cabinet drafts the draft submitted by Democratic Union, which made the President of the RP a part of the executive power³¹ without granting the office of president any meaningful powers or responsibilities of an executive body, was a kind of oddity. The scope of competences of the president did not differ much from the parliament-cabinet drafts submitted by Democratic Left Alliance and Polish People's Party/United Labour although the latter did not place the office of president in the area of executive power.

The four remaining drafts of the constitution were documents strongly emphasizing position of the president in the system of highest state authorities. In art. 54 the presidential draft of the constitution assigned four types of tasks to the president: leading executive power, being the highest representative of the Polish state, ensuring that the provisions of the constitution are adhered to as well as protecting sovereignty and safety of the state as well as inviolability of its borders. The first two tasks were also president's responsibility in the senate draft (art. 85). In turn, in the civic draft of the constitution the role of the president was defined by the two latter tasks (art. 79). Despite differences the remaining three drafts bolstered office of the president in the system of state authorities to such a degree that they could not be considered to be parliament-

²⁶ Compare: „Prawa człowieka w projekcie konstytucji”, M. Piechowiak, *Rzeczpospolita*, 23rd of May 1995.

²⁷ The draft submitted by the Confederation of Independent Poland was limited solely to the representation system.

²⁸ Art. 5, section 1 of the Confederacy of Independent Poland draft indicates that: "The Republic of Poland is led by the Sejm of the Republic of Poland consisting of the President, the Chamber of Deputies and the Senate." *Projekty Konstytucji 1993-1997* (cz. 1), R. Chruściak (comp.), 1997, Warszawa: Wydawnictwo Sejmowe, pp. 225.

²⁹ The constitution drafts of Democratic Left Alliance, Democratic Union and Polish People's Party/United Labour.

³⁰ Drafts submitted by Democratic Left Alliance and Polish People's Party/United Labour did not project existence of the Senate as a second chamber. The Democratic Left Alliance draft proposed substituting the Senate with the National Chamber of Economy and Labour.

³¹ Art. 84 of the Democratic Union's draft. *Projekty Konstytucji 1993-1997* (cz. 1), R. Chruściak (comp.), 1997, Warszawa: Wydawnictwo Sejmowe, pp. 280.

-cabinet drafts. In this regard these drafts were closer to the position of the president of the fifth French Republic and thus the parliamentary-presidential form of rule. The specific variant of systemic solutions regarding this matter, clearly deviating from the remaining ideas regarding structure of state authorities, was contained in the Confederation draft. In this draft the president was the highest body of the Sejm of RP and through limiting the deputies' chamber to strictly legislative role and by making the Senate, the government, courts and supervising institutions directly or indirectly dependent the President could in actuality take the dominant position among the central state authorities. In allusion to the terminology and structure of sejms of nobility the factual role of the president in terms of political and legal importance of the office, similar to the position of the president in the April Constitution of 1935, was obfuscated. This draft also improved standing of the Senate against the Sejm by imparting on the Senate a number of significant legislative and supervisory powers regarding the government³².

Apart from the Confederation draft the increased role of the Senate has been emphasized in civic and senatorial drafts. In comparison to the "Small Constitution" these drafts extended the term of the second chamber from 4 to 5 and 6 years respectively. Furthermore, the senatorial draft projected replacing a half of senators every three years. No other propositions of major changes in operations of the Senate were included in other constitution drafts apart from the Confederation draft. Furthermore, the drafts projecting existence of two chambers of the parliament also did not project changing the number of senators which was to remain 100. The exception was the Confederation draft which proposed 124 senatorial mandates³³.

A prominent spot in the system of separation of powers in all constitutional drafts was taken by the judicial power. Each of the drafts emphasized the principle of independence of courts and judges. Drafts of Polish People's Party/United Labour, Democratic Left Alliance, Democratic Union and president granted the National Council of the Judiciary the role of a guardian of independence of judges and courts as well as the right to give opinions on the nominees. The senatorial and civic drafts included only the entries regarding the opinion-making role of the National Council of the Judiciary and the Confederation draft did not mention this institution at all.

Separate and specific entries in the constitution drafts were devoted to the issue of local self-governments. All seven drafts of the constitution defined a local self-government as a basic form of "local public life" having a legal personality and holding the right to material property. The drafts recognized a municipality as a basic unit of a local self-government. Furthermore the drafts of Democratic Union and Confederation introduced a second level of a local self-government – a county self-government (art. 130, section 4) in case of the former and a voivodeship self-government (art. 70, section 1) in case of the latter. The remaining drafts only projected the potential of bringing self-governments together within borders of the country. The Democratic Left Alliance also projected universal and direct elections of not only the legislative bodies of self-governments but also of village mayors, mayors and presidents of cities. In turn, similarly to other drafts, the Confederation draft was in favour of the municipality councils electing authorities governing the municipality and in the case of voivodeship self-governments in favour of the President appointing voivode as the body in charge of the local assembly. The Democratic Left Alliance draft projected election of local self-government authorities directly by the local communities

³² See: Projekt konstytucji KPN art. 5 i art. 47-54 w: Ibidem, p. 224, 236.

³³ The 124 senators composition consisted of 19 senators appointed by the President (7 ministers and 12 voivodes) and 105 castellans elected directly in electoral districts for a term of 6 years; every 2 years a third of castellans (35 senators) was to be replaced. See: Projekt konstytucji KPN w: Ibidem, pp. 236-237.

and simultaneously uniformed the electoral procedure from the office of the president down to the office of a village mayor. Such electoral procedure bolstered position of the elected authorities towards the legislative bodies of the self-government. The Confederation draft proposed a fusion of a state and self-government body in the form of a voivode leading a local assembly. The Confederation draft entrusted the task of appointing the voivode to the President of RP and in functional terms it subjected voivode to the local voivodeship assembly. Such solution ensured that the central authorities will be able to influence the voivodeship self-government; however, in this variation of the system such solution was necessary due to the Confederation draft foregoing voivodeship administration which on the field level was to be entrusted to starosts and county administration. Solutions present in other drafts alluded to the forms and procedures of electing self-government authorities already existing at the municipal level.

Apart from the local self-government Democratic Left Alliance introduced into the draft other forms of communal self-government. These forms pertain primarily to the aforementioned National Council of Economy and Labour, which was to "ensure cooperation of employers and employees and the government"³⁴. In the light of this project the Council was to serve as a forum for representing interests of businesses, employers, employees, professional associations and administration. The basic function of this institution was to be "settling opinions of trade unions, employers' associations, economical self-government organizations and professional associations as well as state authorities regarding directing economical and social life of the country"³⁵. The procedure for appointment³⁶, scope of opinion-making authority and the right to legislative initiative bestowed upon the Council the rank of a social and economic chamber of the parliament³⁷. However, owing to lack of legislative initiative in regards to budgetary matters the Council could not be attributed with the role of a body decisive for division of national income. The liberal school counted the concept of the National Council of Economy and Labour as a neocorporate solution reflected in the drafts of Confederation for Independent Poland and the civic draft³⁸.

Civil rights and freedoms included in the drafts of the constitution alluded to the liberal conception of human rights based of the natural rights which are protected by the constitution and exercising which is defined in the constitution. The paradigm conception of human rights was not accurately reflected in all drafts and in some it was directly dismissed³⁹. This conception was accurately reflected in the drafts of Democratic Union, the senate and in presidential Charter of Rights and Freedoms. The drafts of Polish People's/United Labour, Democratic Left Alliance and the civic draft operated on similar premises, e.g. the objective rights of an individual, but were not limited to these rights and additionally expanded the catalogue of social economical and cultural rights. As mentioned previously in the light of liberal standards the last three drafts strongly departed from the paradigmatic conception of human rights towards the social security

³⁴ Democratic Left Alliance draft art. 33, section 1 in: *ibidem*, p. 127.

³⁵ Art. 146 section 1 in: *ibidem*, p. 128.

³⁶ The Democratic Left Alliance draft of the constitution stipulated that the National Council of Economy and Labour was to consist of 100 members: 45 representatives delegated by nation-wide trade unions' and farmers' associations representatives, 30 members delegated by employers' associations and professional association organizations, 15 members appointed by the President from among the exceptional experts and scholars and 10 members appointed by the President of the Council of Ministers from among the administration employees. *Ibidem*, pp. 127-128.

³⁷ *Ibidem*, p. 28.

³⁸ These included the Confederation draft which primarily emphasized welfare of the Republic of Poland. See art. 1-3, 17-21 of this draft in: *ibidem*, p. 224, 227.

³⁹ *Ibidem*, p. 227.

and thus displayed the primacy of social regulations over rights of an individual⁴⁰. This at least questionable stance did not account for the fact that the constitutional obligations of the state regarding social activities aimed at citizens not only did not restrict rights and freedoms of citizens but also significantly expanded and actualized these rights and freedoms⁴¹ provided that the extent of regulations of social, economical and cultural rights did not restrict freedom of an individual. None of the three drafts of the constitution exceeded this boundary and thus cannot be accused of representing a collectivist perspective⁴².

The drafts of constitution accepted by the Constitutional Committee of the National Assembly displayed major similarities in the field of designing primary systemic instruments of the Polish state. These concepts were not identical but convergent in terms of forming a democratic state and respecting principles of law and order. The indicated disputes regarding form of the state, single or dual chamber parliament, were not severe enough to make reaching a mutually satisfying compromise impossible. Similarly the possibility existed of reaching a consensus regarding the structure and powers of local self-governments and the issue of civic rights and freedoms – the topics where differences in views were slight. The differences and discrepancies discussed above as well as other differences in political views not tackled in this paper (e.g. the model of state-church relationship) did not present obstacles in the area of developing modern democratic vision of Polish political system to be entered into the Basic Law.

Conclusions

The performed analysis of the most significant legal and systemic changes occurring towards the conclusion of existence of PRoP and the beginnings of the new constitutional order of the Republic of Poland indicates towards the evolutionary process of development of a democratic state. The gradually introduced amendments to the constitution of PRoP/RP were pivotal for the progress of this process. These amendments demonstrated that legal changes introduced into the constitution not only transformed the existing authoritarian political-systemic reality but, judging by the drafts of the constitution submitted to and considered by the Constitutional Committee of the National Assembly, the amendments presented a possible to reach compromise regarding the future of Polish political system. This fact allows us to ascertain that the process of establishing a new political system does not have to take the form of a radical shift (revolution) but can progress through gradual legal-systemic changes which in their final stages enable developing and adopting a new constitution sanctioning democratic state's system. As certain political science experts and constitutionalists claim the main advantage of Poland adopting a new constitution later than other countries of central and eastern Europe consist in Polish constitution "not being a temporary compromise" and avoiding the so called "negative constitutionalism" phenomenon (Holmes, 1993, p. 47; Antoszewski, 2012, p. 52). Thus far the coming 25th anniversary of adopting the Constitution of the Republic of Poland on 2nd of April 1997 appears to confirm this claim.

⁴⁰ See: „Prawa człowieka w projekcie konstytucji”, M. Piechowiak, *Rzeczpospolita* z 23 maja 1995, p. 15.

⁴¹ Compare: „Zakres i sposób regulacji praw ekonomicznych, socjalnych i kulturalnych w przyszłej konstytucji”, H. Suchocka, 1990, in: Z. Kędzia (ed.), *Prawa, wolności i obowiązki człowieka i obywatela w nowej polskiej konstytucji*, Poznań, PCPC, p. 147.

⁴² Compare: „Problematyka ekonomiczna i społeczna w projektach konstytucji”, B. Zawadzka, 1994, *Mysł Socjaldemokratyczna*, 2, pp. 33-38.

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