CITIZEN

–

SUBJECT

OR

OBJECT

IN THE CONSTITUTIONAL SYSTEM

edited by

Sabina Grabowska

wydawnictwo
adam marszałek

NAUKA DLA
SPOŁECZEŃSTWA

CITIZEN

– SUBJECT OR OBJECT IN THE CONSTITUTIONAL SYSTEM

edited by

Sabina Grabowska

wydawnictwo
adam marszałek

REVIEWERS
Grzegorz Koksanowicz
Krzysztof Eckhardt

LANGUAGE EDITOR
Bernadeta Lekacz

STATISTICAL EDITOR
Daniel Kawa

MANAGING EDITOR
Daniel Kawa

TECHNICAL EDITOR
Mirosław Głodkowski

PROOFREADING
Team

COVER DESIGN
Krzysztof Galus

Toruń 2024
ISBN 978-83-8180-883-5

The publication was created as part of the scientific project entitled: ONLINE SERVICE OF CITIZENSHIP EDUCATION – A platform for cooperation between science and society, NdS/551978/2022/2022, financed through a competition for the implementation of projects under the "Science for Society" programme, announced by the communique of the Minister of Education and Science of 1 July 2021 on the establishment of the programme called "Science for Society" and the call for proposals amended by the announcement of the Minister of Education and Science of 12 October 2021 amending the communique on the establishment of the "Science for Society" programme and the call for proposals, in connection with Article 376(1) and (2)(1) of the Act of 20 July 2018 – Law on Higher Education and Science (Journal of Laws of 2021, item 478 with amendments)

The publishing house sells by mail order:
tel. 56 664 22 35, e-mail: marketing@marszalek.com.pl

Adam Marszałek Publishing House
44 Lubicka Street, 87-100 Toruń, tel. 56 664 22 35
e-mail: info@marszalek.com.pl, www.marszalek.com.pl
Printing House No. 2, 54 Warszawska Street, 87-148 Łysomice, tel. 56 678 34 78

TABLE OF CONTENTS

Radosław Grabowski
ORCID: 0000-0003-3362-7363
University of Rzeszów

Sławomir Bździuch
ORCID: 000-0002-4487-6835
University of Rzeszów

On the Need to Study the Level of Civic Education and the Sources of Financing for the Project *INTERNET SERVICE OF CITIZENSHIP EDUCATION – A Platform for Cooperation between Science and Society*

Effective citizenship education must be preceded by the determination of the content of key concepts. Various definitions can be found in the literature, but taking into account evolution, the most precise seem those that consider not only historical and social elements, but also legal ones. As an example of such an approach, the following view can be pointed out: "Referring to the historical and legal cross-section of the concept of «citizen», we can see that it is the political system of a given state that determines the status of its resident. Moreover, not only the legal situation, but also the scope of subjective rights, freedoms, and obligations

(both horizontally and vertically). Through the general principles expressed in the Constitution, the constitution-maker indicates to the citizen the values which he considers the most important"[1]. Therefore, it should be assumed that the concept of citizenship is related to membership in a specific political community, denoting the relationship between an individual-citizen and a specific state, delineating the area of various types of civic activities. This kind of relationship brings benefits to both parties – the state benefits from actions taken by conscious and pro-state citizens, citizens receive various types of tools thanks to which they can realise their aspirations.

However, taking informed action in this area requires citizens to have the appropriate competencies. Findings in this regard are provided by the analysis of the public discourse conducted in news services, Internet forums, statements of Polish journalists, politicians, and people presented by them as experts. It leads to the conclusion that Poles use concepts related to the functioning of the state and society without understanding their content[2]. This problem concerns not only average citizens, but also people from professional groups where such knowledge is necessary. Some of these are deficits resulting from insufficient professional

---

[1] A. Hrehorowicz, *Obywatel w demokratycznym państwie prawa. Ewolucja statusu jednostki z równością w tle*, "Kultura i Edukacja" 2014, no. 4(104), p. 125.

[2] Examples include the use of the term "provision" as a synonym for the terms "legal provision", "legal norm", "legal regulation", or "lower chamber" instead of the Sejm and "upper chamber" instead of the Senate.

competencies to work in the media or lack of substantive preparation for politics. Increasingly, however, it is the result of a deliberate manipulation of the content of selected concepts, most often carried out for the purposes of political rivalry. As a result, in public discourse, many terms are used incorrectly, without understanding their content, as well as phrases that deliberately carry false content, which does not correspond to the realities of the system of social norms, including the current legal system[3].

The proper functioning of a democratic state governed by the rule of law requires that citizens have a certain knowledge of the structure and principles of the state, the basic rules of the legal system, the functioning of forms of democracy, freedom, rights, and duties of citizens[4]. Such knowledge

---

[3] An example of such manipulation is the use of the concept of legal dualism to describe the functioning in Poland of both legal bodies – established under the law, and quasi-legal – established as a result of actions aimed at circumventing the law. Prof. Marek Safjan referred to this problem in an interview for the "Wirtualna Polska" website, https://wiadomosci.wp.pl/prof-marek-safjan-nie-ma-dwoch-porzadkow-prawnych-w-polsce-6993827806997024a (12.02.2024).

[4] "Political awareness is associated with a higher quality of legal awareness, which affects electoral awareness not only in terms of the local community, but also in the national and global community. On the other hand, a higher quality of social, political, legal, and, consequently, electoral awareness results in a better and richer perception of reality, knowledge, evaluation, and formulation of postulates related to it". A. Hrehorowicz, T. Kowalczyk, *Wiedza wyborcza pokolenia "Z" w perspektywie badania ilościowego nad warszawskimi licealistami*, "Przegląd Prawa Konstytucyjnego" 2023, no. 2, p. 121.

should be available to everyone who aspires to be a citizen, i.e., wants to undertake activities reserved for citizens. Moreover, the possession of such knowledge should be treated as a necessary condition in the case of persons actively participating in the exercise of power or aspiring to perform public functions, as well as being professional participants in the public discourse. It is a peculiar paradox that in Poland, there are many procedures for verifying professional and even non-professional competencies (e.g., entitling to drive a motor vehicle), but no certification of civic competence is required, even in the case of people professionally involved in politics[5].

One can get the impression that it is even difficult to decode the concepts of citizen or citizenship, as well as to indicate the desired civic attitudes. Typing the term citizen into a search engine leads to results dominated by information about citizens' rights. Even if there is talk of duties, they are not exposed. Such a catalogue usually contains information about: the right to work or financial benefits that can be obtained, the right to free education, the right to vote, treated

[5] "In societies defined as having high social capital, people are more active in terms of cooperation, making joint efforts for the benefit of the local community, they are active in various organisations, and all this creates opportunities for the so-called social training, which is conducive to the development of social competencies. On the other hand, one of the main causes of poor social competencies is the lack of knowledge on a given topic and the related everyday practice, or ignoring information or the inability to read it". M. Badowska, *Kompetencje społeczne i międzykulturowe nauczycieli i pedagogów w świetle badań własnych*, "Kultura i Edukacja" 2019, no. 1(123), p. 188.

as a due share in co-governance, but without any reflection on bearing responsibility for the state. Civic duties are commonly believed to be something to be avoided, and failure to comply with them does not have negative social consequences[6]. It applies to compliance with the law, bearing public burdens and benefits, and caring for the natural environment. In this context, the ideas of civic fidelity, concern for the common good, or defence of the homeland should be treated as too abstract for the average Pole.

Civic duties are neglected at all levels of education, including legal education at university studies. Clearly, we are also dealing with a declining level of education of students in the field of social studies. An important element influencing civic awareness is pauperisation. Circles that used to be opinion-forming are now increasingly underpaid employees. Due to the social structure of Polish society and the aspirations of Poles, such people are not authorities at present. Hence, the ease of recruiting people to participate in projects that are dubious from a civic point of view. This gap is filled

[6] "On the one hand, citizens expect the state to protect them from the negative effects of the development of the capitalist economy (high social benefits, compensation, etc.), and on the other hand, they want freedom and success. They expect protection, security, and stability from the state, but they are reluctant to comply with the rules of social life, formal and informal norms, as exemplified by low voter turnout (…) or – in the case of Poland – a high percentage of intoxicated drivers who thoughtlessly expose themselves and other participants of public space to loss of life/permanent disability". P. Wenderlich, *Kultura masowa – aktywni konsumenci, bierni obywatele? Implikacje w sferze publicznej*, "Świat Idei i Polityki" 2015, vol. 14, p. 425.

by the authorities of the pop-culture era, the so-called celebrities. All these elements allow us to understand the reasons why Poland is stuck in a kind of trap of low development of citizenship: "Inclusive citizenship consists of four basic elements: membership, which is also linked to a sense of belonging and participation; the rights (personal, political, and social), and duties (in the public and private spheres, both political and social) resulting from this membership; finally, equality of status, respect, and recognition. The significance of each of these elements may vary depending on the social, political, and cultural context – in one part of the world participation is more important, in another – civic rights and duties"[7].

One of the main problems faced by Polish universities is the low increase in the level of their funding in the context of high inflation. As a result, the higher education sector is increasingly struggling to maintain financial liquidity. Considering that, universities very often limit the funds allocated to scientific research by their employees in the first in order to secure the financing of salaries and the media. This problem puts the academic community in a very difficult position, because with such limited funding, there is no possibility of improving scientific research based on the available resources. This situation implies the need to seek funding for research conducted by academic staff outside the university. In this case, scientists most often try to obtain funding from grants from the National Science Centre, the National Centre for Research and Development, or the Ministry

[7] M. Kuleta-Hulboj, *Inkluzywny potencjał globalnej edukacji obywatelskiej*, "Kultura i Edukacja" 2019, no. 1(123), p. 84.

of Education and Science. In the case of the Subcarpathian Province, university employees also have the opportunity to obtain funds from the Subcarpathian Innovation Centre for their research. Of course, all of these sources of funding for research require significant commitment from scientists, as it is necessary to submit applications for project funding as part of the competitions conducted by the mentioned institutions. These applications are verified by experts at the project evaluation stage and only those that receive a sufficiently high score receive funding. This situation makes obtaining funding in the form of external projects quite demanding and complicated. In particular, scientists representing the social sciences and humanities must be involved in obtaining external funding for research, as they have far fewer opportunities for this type of funding than specialists in medical or natural sciences. Considering the limited application possibilities of scientists representing the mentioned fields, on July 21, 2021 the Minister of Education and Science issued an announcement on the creation of a programme called "Science for Society".

The main objective of the "Science for Society" programme is to build and develop cooperation between entities operating in science and the socio-economic environment. A key element of the established cooperation is to disseminate the results obtained as part of the research to a broader group of recipients. Research that can receive funding under this programme should focus on the following areas[8]:

[8] Communique of the Minister of Education and Science of 1 July 2021, https://www.gov.pl/attachment/ae9bf35d-610e-49ef-b281-bd4fad9508f2 (18.11.2023).

1. "Scientific excellence" – this area supports projects aimed at:
   a) improving the quality and breakthrough of scientific research (frontier research), particularly by identifying new research problems of key importance for socio-economic development and undertaking pioneering research work in this area,
   b) internationalisation of Polish science and increasing the recognition of its achievements,
   c) development and implementation of the concept of development of research and teaching staff,
   d) improving the quality of academic teaching,
   e) shaping and implementing evaluation mechanisms initiating pro-quality changes,
   f) identifying stimuli and measures for the development of Polish science,
   g) shaping the public perception of Polish science.
2. "Science for innovation" – this area includes projects aimed at:
   a) improving the effectiveness of cooperation between science and the economic environment,
   b) supporting innovation processes and commercialisation of research and development results, as well as know-how related to these results,
   c) promoting good practices in innovation;
   d) dissemination of knowledge on the relationship between science, innovation, and economy.
3. "Humanities – Society – Identity" – this area includes projects that aim to:
   a) development of the humanities and stimulation and promotion of innovative research in the humanities;

b) development and promotion of interdisciplinary research in humanities,
c) using the humanities for the development of other areas of science, as well as culture, education, economy, and society,
d) researching and promoting the idea of Polishness in history, culture, and political thought,
e) conducting research in the field of national (cultural) identity for the sake of the durability of the Polish national tradition,
f) research and promotion of Polish regional and national traditions and patriotic attitudes,
g) research and popularisation of regional and national sources of Polish culture (including literature, art, music, and philosophical thought) in Poland and abroad,
h) conducting research on Polish museums and places of national remembrance in Poland and abroad.

The issues addressed by the projects that apply to the programme should concern at least one of the indicated areas. Other key conditions for entering the competition under the "Science for Society" programme include, among others, the following:

– the project must not last longer than 24 months;
– the value of the project should be at least PLN 100,000, but not more than PLN 2,000,000,
– The costs planned to be financed are necessary for the implementation of the project and the achievement of its results.

The "Science for Society" programme, due to its fairly broadly defined research areas and attractive funding, has

been very well received by entities involved in the broadly understood dissemination of science since its implementation. Interest in this support was also shared by scientists employed at the University of Rzeszów, who, as part of their research activity, undertook the effort of applying for funding under the programme. One of the projects that successfully applied for funds under the "Science for Society" programme was a project prepared by a team of scientists employed at the College of Social Sciences of the University of Rzeszów, entitled *ONLINE SERVICE OF CITIZEN EDUCATION – A platform for cooperation between science and society*. As a result of the substantive evaluation carried out by the expert team of the Ministry of Education and Science, the project received funding in the amount of PLN 391,710.70[9].

It is an interdisciplinary project, combining legal, sociological, and political sciences and administration. The main objective of this project is to use the instruments of social sciences, including primarily legal, political, and sociological sciences in improving the quality of scientific research and the quality of academic didactics, as well as to disseminate knowledge about cooperation between science and the broadly understood social environment. This objective aligns with the areas of the "Science for Society" programme, i.e., "Scientific Excellence" and "Science for Innovation".

[9] https://programy.nauka.gov.pl/wp-content/uploads/2022/07/Wnioski-zakwalifikowane-do-finansowania-w-ramach-programu-Nauka-dla-Spoleczenstwa-30-czerwca-2022-r.pdf (14.01.2024).

The project is scheduled to be implemented for 24 months, during which the project team has planned the implementation of the following tasks:

- Task 1 – Improving the quality of scientific research in the field of knowledge about the state system and its impact on the quality of public debate and the level of civic engagement,
- Task 2 – Shaping the public perception of science and disseminating knowledge about the state system and its impact on the quality of public debate and the level of civic engagement,
- Task 3 – Creation of an online service of citizenship education and development and editing of a network of concepts in this area,
- Task 4 – Improving the quality of academic didactics.

The results of the implementation of individual tasks are: organisation of a scientific conference, publication of an English-language scientific monograph, creation of an online service of citizenship education, and publication of an academic textbook. An indirect effect of the implementation of the project entitled *INTERNET SERVICE OF CITIZEN EDUCATION – A platform for cooperation between science and society* is also the deepening of cooperation between scientists representing such disciplines as law, sociology, or political science with other disciplines functioning at the College of Social Sciences of the University of Rzeszów. The created platform for the exchange of views will allow for implementing further scientific, didactic, and popularising projects in the future, which will contribute to the development of the University of Rzeszów and intensify its impact

on the social environment[10]. However, the main goal of the project initiators is to develop instruments helpful in modern civic education. It is intended to be easily accessible to the mass audience, to educate at a level that considers the needs of an informed citizen of a modern democratic state, to offer content tailored to the perception of the recipient, available in a form that is attractive to members of the digital society. "When we talk about citizens and society – in a political context – we mean public opinion, which should be the initiator of mature and informed public discourses. Therefore, the condition for making reasonably rational choices is the existence of wise and educated citizens. They acquire this character, for example, through upbringing, socialisation, and education"[11].

Literature

Badowska M., *Kompetencje społeczne i międzykulturowe nauczycieli i pedagogów w świetle badań własnych*, "Kultura i Edukacja" 2019 no. 1(123).

Hrehorowicz A., *Obywatel w demokratycznym państwie prawa. Ewolucja statusu jednostki z równością w tle*, "Kultura i Edukacja" 2014, no. 4(104).

Hrehorowicz A., Kowalczyk T., *Wiedza wyborcza pokolenia "Z" w perspektywie badania ilościowego nad warszawskimi licealistami*, "Przegląd Prawa Konstytucyjnego" 2023, no. 2.

[10] https://www.ur.edu.pl/index.php/pl/uniwersytet/aktualnosci/nauka-dla-spoleczenstwa-dla-kolegium-nauk-spolecznych-ur, 39142 (12.02.2024).

[11] P. Wenderlich, *Kultura masowa*…, p. 426.

Kuleta-Hulboj M., *Inkluzywny potencjał globalnej edukacji obywatelskiej*, "Kultura i Edukacja" 2019, no. 1(123).

Wenderlich P., *Kultura masowa – aktywni konsumenci, bierni obywatele? Implikacje w sferze publicznej*, "Świat Idei i Polityki" 2015, vol. 14.

Hubert Kotarski
ORCID: 0000-0002-5370-7099
University of Rzeszów

Analysis of Civic Attitudes – On the Need for Civic Education

Introduction

The problem of citizenship and civic attitude has been considered a legal and philosophical issue for two millennia. The concept of citizen appears in the third book of Aristotle's *Politics*, but we will not find an unambiguous definition there, because in the philosopher's opinion, it is a disputed concept and depends on the system of the state[1]. In political and legal theory, citizenship refers to the rights and duties of a member of a nation-state or a city dweller. In the past, a citizen was any inhabitant of a city, that is, a member of a community relatively independent of the king or state authorities. In ancient Greece, only free people were citizens, and they also had the right to participate in political decision-making, because they contributed to the city's defence, often as soldiers. Democratisation has broadened the scope

[1] Arystoteles, *Polityka* [in:] *idem*, *Dzieła wszystkie*, vol. 1, Warszawa 2003.

of citizenship, recognising everyone as citizens, regardless of age, gender, or nationality.

The concept of citizenship was revived during the period of the formation of the modern state, especially during the French and American revolutions. Gradually, it began to be associated more with rights than with obligations[2]. Sociologists are also interested in the issues of citizenship and civic attitude. Citizenship is an individual's legal status and social role simultaneously. In the traditional language of sociology, it is only one of the social roles of the acting subject – an important but not the most important[3]. Contemporary sociological theories of citizenship draw heavily on the work of Thomas Humphrey Marshall, who defined citizenship as the status of an individual who is a full member of a collective[4]. In his reflections, Marshall spoke of three dimensions of citizenship: civil, political, and social. The former concerns civil rights, which provide the individual with freedom and are institutionalised as a court. Political citizenship guarantees the right to participate in a community's political power by voting or holding office. Social citizenship is the right to an adequate standard of living, which is reflected in school systems and social benefits[5].

---

[2] *Obywatelstwo* [in:] *Słownik socjologii i nauk społecznych*, ed. M. Tabin, Warszawa 2005, p. 217.

[3] J. Raciborski, *Wprowadzenie: oblicza obywatelstwa* [in:] *Praktyki obywatelskie Polaków*, ed. J. Raciborski, Warszawa 2010, p. 8.

[4] T.H. Marshall, *Citizenship and Social Class: And Other Essays*, Cambridge 1950.

[5] *Obywatelstwo* [in:] *Słownik socjologii i nauk społecznych*, ed. M. Tabin, Warszawa 2005, p. 217.

The paper presents partial results of a survey carried out as part of the project *INTERNET SERVICE OF CITIZENSHIP EDUCATION – a platform for cooperation between science and society* among students of all secondary schools in the Subcarpathian Province.

Civic Attitude – Definitional Implications

Contemporary civic attitudes and behaviours originate from civic habituses shaped over millennia[6]. Analysing civic attitudes in a society is an important tool in understanding the degree of civic engagement and awareness in a given community. Citizenship is not only a formal legal status, but also an active attitude towards society, involvement in public life, and awareness of civic duties and rights. In the context of this analysis, civic education is needed to shape aware, engaged, and responsible citizens.

The concept of attitude is firmly rooted in the deliberations of researchers from the social sciences and is one of the basic concepts in social psychology and sociology. Interest in the issue of attitudes finds its expression both in theoretical considerations and empirical research[7]. Attitude is defined as the totality of individual consciousness processes that determine a particular person's actual and potential reactions towards an object. In social sciences, the term attitude was popularised by William I. Thomas and Florian Znaniecki in

---

[6] P. Weryński, *Wzory uczestnictwa obywatelskiego Polaków*, Warszawa 2010.

[7] M. Marody, *Sens teoretyczny a sens empiryczny pojęcia postawy*, Warszawa 1976, p. 5.

the introduction to their work *Chłop polski w Europie i Ameryce* (*The Polish Peasant in Europe and America*)[8], to denote the processes of individual consciousness that determine the actual and potential reactions of each person to the social world[9]. The proposal initiated by the work of Thomas and Znaniecki met with a positive reception, at least in the sense that the interest in attitudes and the development of various techniques of their study made this issue a permanent area of inquiry in the social sciences.

However, with the development of research, there was an increasing diversification of the concept of attitude itself, and in 1939, Erie Nelson could already count twenty-three ways of defining or understanding this term. Thus, it could mean: goals of action, motives, beliefs, the "core of feelings", a special case of predisposition, a determinant of the direction of action, trial reactions. In the post-war years, there was no significant change in this area. The ambiguity of using the term "attitude" seems the most characteristic feature of the term to this day. Despite the multitude of meanings attributed to the concept of attitude, it is possible to point to certain elements that recur in most theoretical considerations and form a common semantic core of this concept. So, there is an attitude, something that always is associated with an affective evaluation, positive or negative, of various types of objects. These can be people, social groups, activities, institutions, physical objects, or events. Therefore, an "indifferent attitude" is basically a contradictory term, since "attitude"

---

[8] W.I. Thomas, F. Znaniecki, *Chłop polski w Europie i Ameryce*, vol. 1, Warszawa 1976.

[9] *Socjologia. Przewodnik encyklopedyczny*, Warszawa 2008, p. 149.

ex definitione implies some, even the most moderate, emotional attitude towards the object. Secondly, this emotional relationship bears the characteristic of permanence. Although it poses some operational problems because attitudes change, most researchers agree that attitude can only be said to be stable when we are dealing with relatively stable evaluations. Thirdly, an attitude is always an attitude toward something, even if that "something" is not specified in the name of the concept, such as when we speak of a prosocial or authoritarian attitude. Fourthly, it is assumed that attitudes are acquired and modified in the learning process, with the individual's personal experiences playing an important role. Since the individual's social situation strongly conditions the scope of these experiences, attitudes are most often a reflection of his position in society. The subject of controversy was primarily the problem of the internal structure of attitudes. Along with the development of research on attitudes, works began to appear, the authors of which rejected limiting the concept of attitude to an emotional-affective attitude towards an object. They pointed out that attitudes are phenomena with a complex structure, in which many components and aspects can be distinguished, and the existence or absence of individual components, as well as mutual relations between them, are important for explaining and understanding these phenomena[10]. This kind of structural definition of attitude was used by M. Brewster Smith, who was the first to distinguish three basic components of

[10] M. Marody, *Postawa* [in:] *Encyklopedia socjologii*, vol. 3, Warszawa 2000, pp. 151–152.

attitudes – cognitive, emotional, and volitional[11]. In Polish sociology, the author of the most widely distributed definition of the concept of attitude is Stefan Nowak. According to him, a person's attitude towards a certain object is a set of relatively stable dispositions to evaluate that object and to react emotionally to it, and possibly accompanying these emotional-evaluative dispositions of relatively stable beliefs about the nature and properties of that object and relatively stable dispositions to behave towards this object[12].

Analysis of Civic Attitudes

The study was carried out using the CAWI (*Computer Assisted Web Interview*) technique, which is a computer-assisted interview questionnaire used with the help of a website. Invitation through the Board of Education in Rzeszów to all secondary schools in the Subcarpathian Province. The study covered 1128 students attending secondary schools in the Subcarpathian Province.

The first element of the analysis of civic attitudes was the cognitive component. The analysis focused on knowledge about "being a citizen". Respondents answered to 20 questions about basic knowledge related to citizenship education. The first question concerned one of the basic principles of the functioning of power in Poland, namely its tripartite

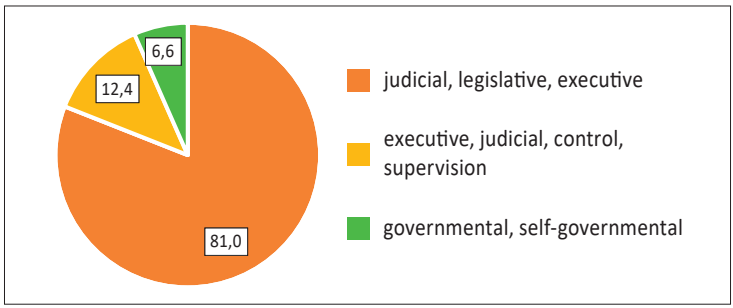
---

[11] M.B. Smith, *The Personal Setting of Public Opinions* [in:] *Readings in Attitude Theory and Measurement*, ed. M. Fishbein, New York 1967.

[12] S. Nowak, *Pojęcie postawy w teoriach i stosowanych badaniach społecznych* [in:] *Teorie postaw*, ed. S. Nowak, Warszawa 1973, p. 23.

division. The correct answer to this question was given by 81.0% of the respondents.

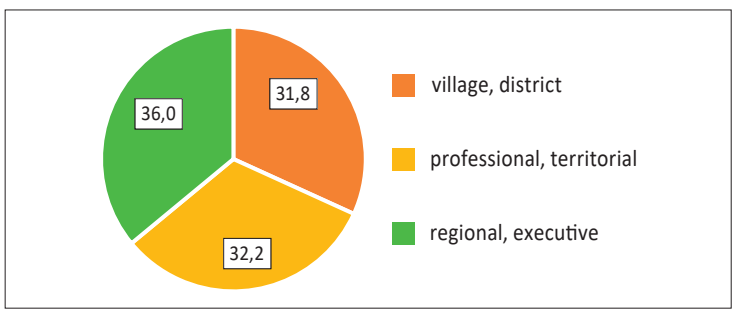
Figure 1. Power in Poland is divided into...



Source: Own calculations.

The second question concerned the types of local governments operating in Poland. This question caused many problems for secondary school students in the Subcarpathian Province, as only one-third of the respondents – 32.2% – gave the correct answer to this question.

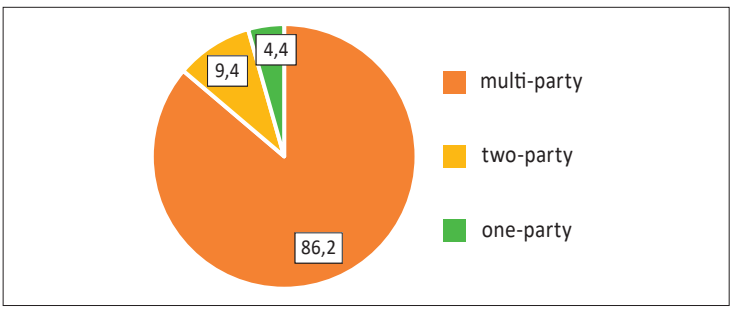
Figure 2. Self-governments operating in Poland are...



Source: Own calculations.

Another question aimed at determining the cognitive component of civic attitudes concerned a system in which several political parties operate. The study had little problem answering this question. Nearly nine out of ten students (86.2%) indicated the correct answer.

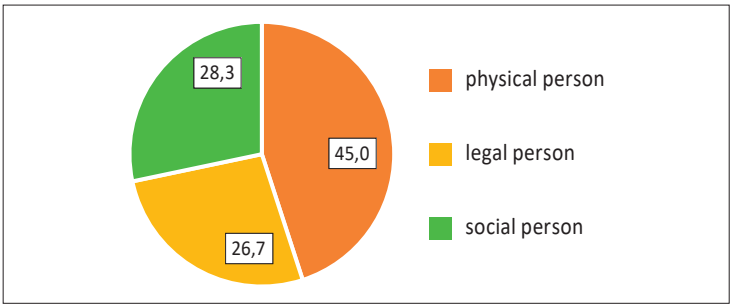
Figure 3. A system in which several political parties operate is defined as...



Source: Own calculations.

The fourth question concerned the legal capacity of a person to be the subject of rights and to have obligations in this respect. Nearly half of the respondents (45.0%) knew that every human being becomes a physical person at birth and remains so until death.

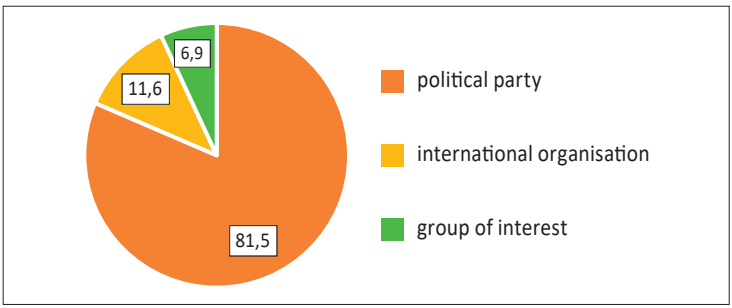
Figure 4. Every human being, from birth to death, is...



Source: Own calculations.

The vast majority of respondents correctly answered the question about an institution whose purpose is to gain and maintain power. More than eighty percent of the students correctly identified a political party as the organisation.

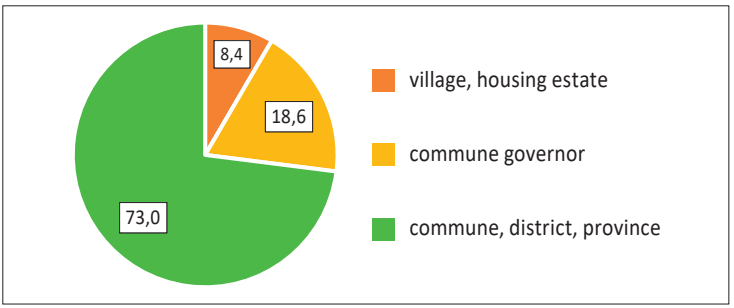
Figure 5. The pursuit of gaining and maintaining power is the goal of action...



Source: Own calculations.

The next question concerned the units of local government. Nearly three-quarters of the respondents (73.0%) correctly indicated the commune, district, and province as the three units forming the self-government.

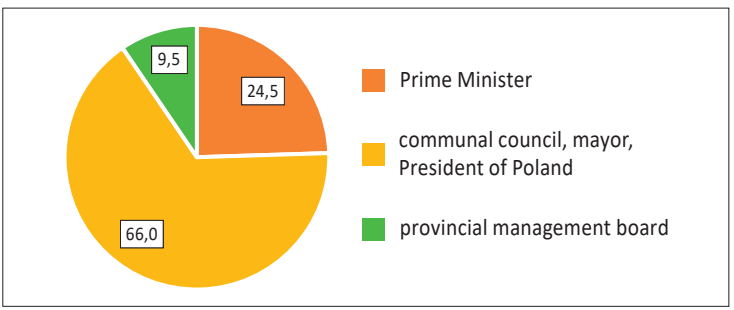
Figure 6. A self-government unit is...



Source: Own calculations.

Two-thirds of the respondents knew that the directly elected bodies are the communal council, the mayor, and the President of the Republic of Poland (66.0%).

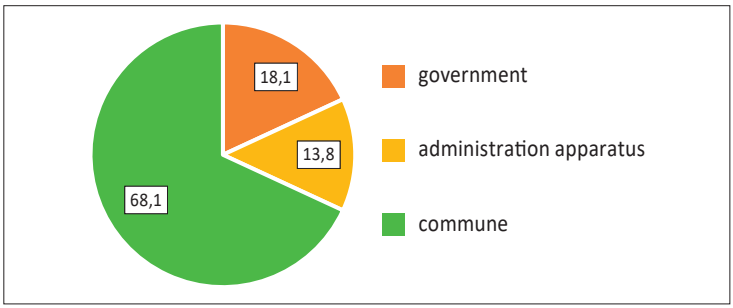
Figure 7. Communal Council, Mayor, President of the Republic of Poland...



Source: Own calculations.

More than two-thirds of the surveyed students (68.1%) knew who is responsible for implementing local public affairs.

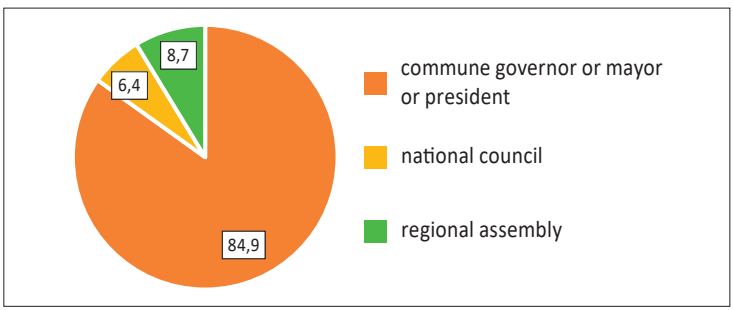
Figure 8. The following are responsible for the implementation of local public affairs...



Source: Own calculations.

Another question also concerned issues related to local government. Over eighty percent of the surveyed high school students (84.9%) correctly answered whether the commune authority is the commune governor, mayor, or president.

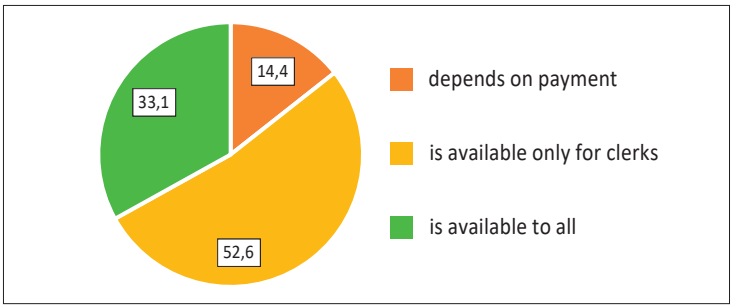
Figure 9. The authority of the municipality is...



Source: Own calculations.

Another question concerned an individual's civil rights and was related to the inspection of official documents. Only one-third of the respondents knew that every citizen is entitled to it (33.1%).

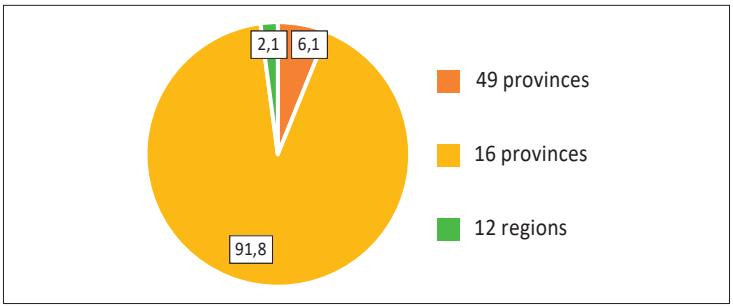
Figure 10. Right of access to official documents...



Source: Own calculations.

The vast majority of students correctly answered the question about the territorial division of Poland, indicating that it is divided into 16 provinces (91.8%).

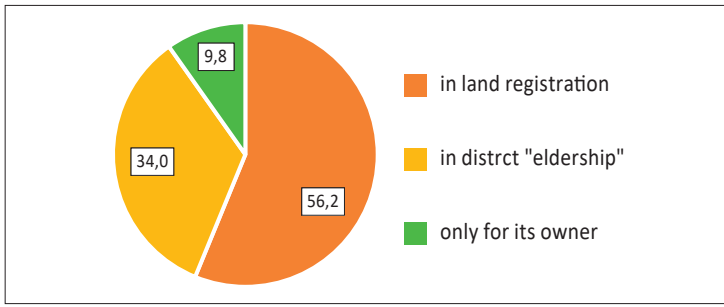
Figure 11. Poland is divided into...



Source: Own calculations.

The next question concerned the sources of information on the legal status of the property. Slightly more than half of the surveyed students correctly indicated that such information should be sought in land and mortgage registers (56.2%).

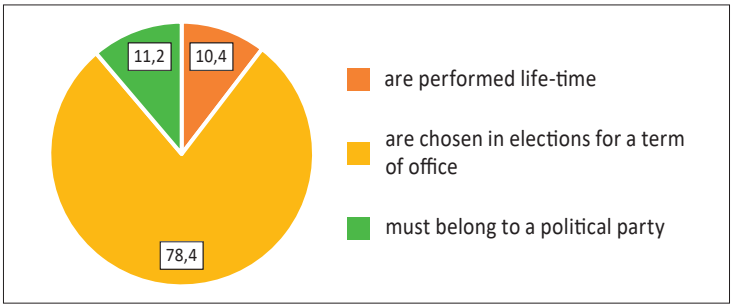
Figure 12. Information on the legal status of the property is available...



Source: Own calculations.

Nearly eighty percent of students knew that people holding the most important positions in Poland are elected by universal suffrage for a specific period (78.4%). Every tenth respondent believed that these functions are performed for life.

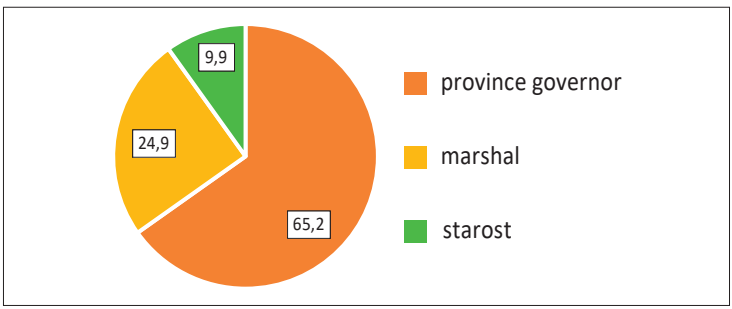
Figure 13. In Poland, the most important functions...



Source: Own calculations.

Only one in four surveyed high school students knew that the province's local government is headed by the marshal of the province (24.9%). The vast majority believed that it was the province governor (65.2%).

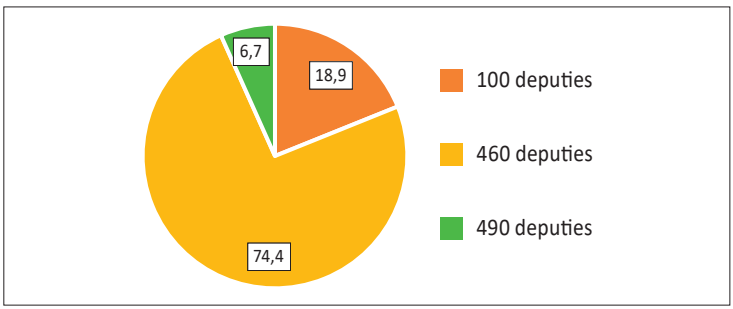
Figure 14. The provincial government is headed by...



Source: Own calculations.

Three-quarters of the respondents correctly answered the question about the number of deputies sitting in the Sejm of the Republic of Poland (74.4%).

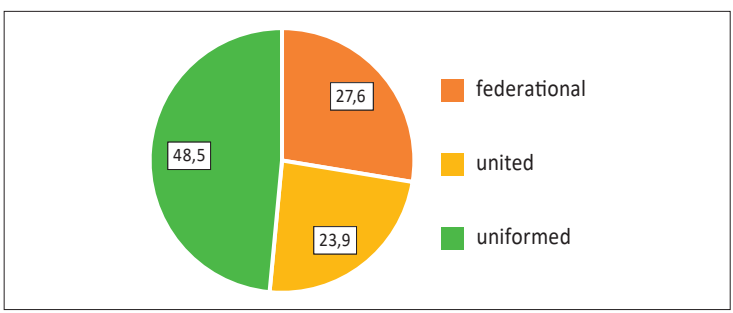
Figure 15. The Sejm of the Republic of Poland consists of...



Source: Own calculations.

Less than half of the surveyed students correctly indicated that Poland is a uniformed country (48.5%). Slightly more than a quarter of respondents claimed Poland was a federal state, while less than one in four respondents believed it was a united state.

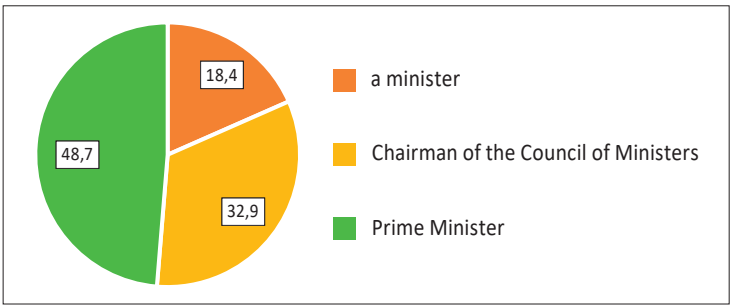
Figure 16. The Republic of Poland is a country...



Source: Own calculations.

Nearly half of the students correctly indicated who is in charge of the work of the Council of Ministers in Poland (48.7%).

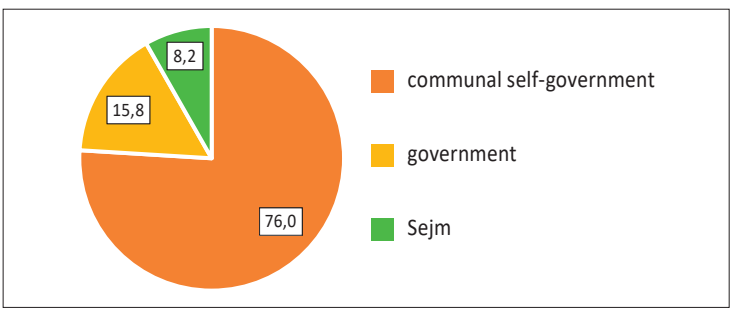
Figure 17. The work of the Council of Ministers is led by...



Source: Own calculations.

The vast majority of respondents knew that the self-government is responsible for determining the amount of fees for waste in the town where the surveyed students live (76%).

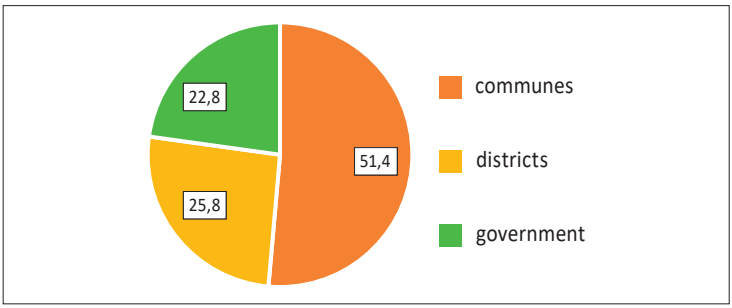
Figure 18. The amount of garbage charges in your place of residence is determined by...



Source: Own calculations.

Half of the surveyed students correctly indicated the maintenance of primary schools as the task of the communal government (51.4%).

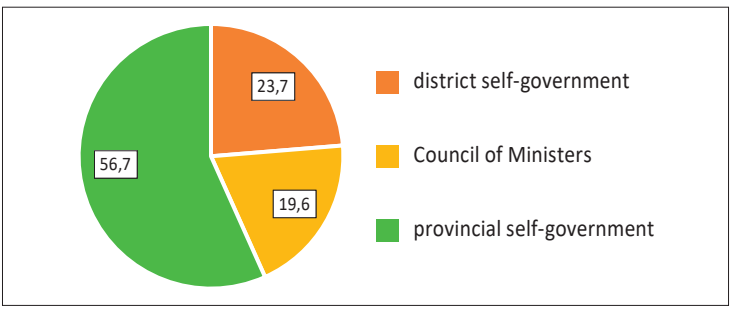
Figure 19. The maintenance of primary schools is the task of...



Source: Own calculations.

The surveyed students had great problems with correctly answering the question of what level of authority the province governor is. The correct answer was given by one in five respondents (19.6%).

Figure 20. The province governor is a representative of...

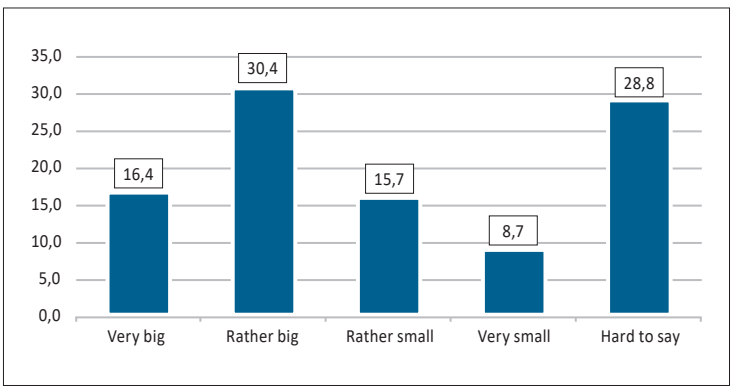


Source: Own calculations.

The basic source of knowledge about the rights and duties of a citizen is the Constitution of the Republic of Poland. Therefore, the respondents were asked about the importance of the principles and regulations contained in the Constitution for the lives of ordinary citizens and whether knowledge of the Constitution is necessary for ordinary citizens or not.

For nearly half of the respondents, the principles and provisions contained in the Constitution are very or rather important for the lives of ordinary citizens (46.8%). Notably, however, nearly thirty percent of the respondents were unable to answer this question, choosing to answer "hard to say" (28.8%).

Figure 21. What is the importance of the principles and regulations contained in the Constitution for the lives of ordinary citizens?



Source: Own calculations.

An even higher percentage of "hard to say" answers concerned whether ordinary citizens need knowledge of the Constitution. Nearly half of the surveyed students (46.4%) were

unable to answer this question. More than a third said that such knowledge is needed (34.0%), while one in five said that it is not needed (19.6%).

Conclusion

The research showed how necessary civic education is in shaping civic attitudes. The analysis of the distribution of responses from the cognitive component showed that the best result – 20 points – was achieved by 0.6% of the respondents. The worst result – 2 points – was achieved by only 0.1% of respondents. The average point value was 12.2 points. Women scored slightly better than men, as the average for women was 12.4 points, while for men it was 12.0 points. The result also depended on the type of school. The best results were achieved by students of general secondary schools (12.7 points), slightly worse by technical secondary schools (12.1 points); stage I and stage II sectoral vocational schools were the lowest (11.1 points and 10.1 points, respectively).

To sum up, analysing civic attitudes is an important tool for societies and educational institutions that want to assess the effectiveness of activities aimed at shaping active and conscious citizens. Support for citizenship education can contribute to creating more engaged, sustainable, and community-oriented societies.

Literature

Arystoteles, *Polityka* [in:] Arystoteles, *Dzieła wszystkie*, vol. 1, Warszawa 2003.

Marody M., *Postawa* [in:] *Encyklopedia socjologii*, vol. 3, Warszawa 2000.
Marody M., *Sens teoretyczny a sens empiryczny pojęcia postawy*, Warszawa 1976.
Marshall T.H., *Citizenship and Social Class: And Other Essays*, Cambridge 1950.
Nowak S., *Pojęcie postawy w teoriach i stosowanych badaniach społecznych* [in:] *Teorie postaw*, ed. S. Nowak, Warszawa 1973.
Obywatelstwo [in:] *Słownik socjologii i nauk społecznych*, ed. M. Tabin, Warszawa 2005.
Raciborski J., *Wprowadzenie: oblicza obywatelstwa* [in:] *Praktyki obywatelskie Polaków*, ed. J. Raciborski, Warszawa 2010.
Smith M.B., *The Personal Setting of Public Opinions* [in:] *Readings in Attitude Theory and Measurement*, ed. M. Fishbein, New York 1967.
Socjologia. Przewodnik encyklopedyczny, Warszawa 2008.
Thomas W.I., Znaniecki F., *Chłop polski w Europie i Ameryce*, vol. 1, Warszawa 1976.
Weryński P., *Wzory uczestnictwa obywatelskiego Polaków*, Warszawa 2010.

Michał Mistygacz
ORCID: 0000-0001-7083-7840
University of Warsaw

The Limits of Constitutional Loyalty

Introduction

It is self-evident that constitutionalism frees society from the tyranny of the nature's fatalism. While the legal system becomes orderly with the formation of the Constitution, it is not merely a convenient form of government. It also lays down the foundations of the political system, the *modus procedendi* of the state authorities, fosters social integration, and establishes the rights and citizens' duties. The definition of the framework necessitates the existence of a civil system, which makes it unacceptable to oblige citizens to an autocratic authority that remains passive to the votes of the citizens. According to John Locke, authoritarian power does not come out of nature. It is the philosopher from Wrington who treats the right of subjects to resist as the right of civil opposition to the violation of the principles of the implementation of the public good. He sees it as a right to restore civil society. Thomass Jefferson, in *The Draft of the Kentucky Resolutions* of 1798, points out that in matters of power, it is not worth considering the question of trust in man, but binding him from evil with the fetters of the constitution. Constitutions

are the chains that protect the nation in case of madness, as they are an expression of intergenerational bonds, historical tradition, and a symbol of permanence. The Constitution, as a result of conscious human activity, is a manifestation of the culture of trust. As Stefan Czarnowski points out, culture consists not only of the material products of human activity, but also of intellectual achievements and patterns of behaviour that are widespread in society[1].

The issue of the constitutional loyalty, but also the concept of loyalty in general, is multifaceted. The very notion of loyalty is not a product of legal language. The etymology of the word "loyal" derives from the Latin language – *legalis*, meaning law-abiding, right-minded, acting in accordance with the orders of the authorities. A loyal person is a person who is honest, reliable in relations with others, does not violate trust or fulfils her obligations[2]. Loyalty can refer to another person, a group of people, entire communities, and institutions or values. Such a definition makes it possible to locate the duty of loyalty within the framework of citizen-state subordination, i.e., a vertical relationship. It does not preclude loyalty in the horizontal dimension, that is, in interpersonal relationships, which is justified by moral reasons. The latter require mutual trust. With regard to constitutional loyalty, we are talking about a relationship within the framework of subordination to a kind of suzerain – the Constitution. The negation of loyalty is actions that include direct or indirect actions against the dignity, authority and prestige of a constitution written in majuscule. Therefore, disloyalty

[1] S. Czarnowski, *Kultura* [in:] *Dzieła*, vol. 1, Warszawa 1956, p. 20.
[2] P. Sztompka, *Zaufanie*, Kraków 2007, p. 36.

includes actions which will result in weakening the constitutional position of the Constitution. Therefore, the antonym of constitutional loyalty is constitutional treason.

The definition of the boundaries of loyalty, i.e., those related to the boundaries of trust in a particular institutional domain, links the concept of trust with the idea of representation. No matter how we look at it, trust is an essential concept for the "late modernity" phase and the associated increasing complexity, uncertainty, and risk. Trust and distrust are a resource, a capital that we use when dealing with others. Trust reduces uncertainty. Distrust, on the other hand, provides protective barriers against threats. Both trust and distrust can be directed towards various objects, including personal trust (towards specific people, acquaintances), positional trust (towards specific social roles, professions, positions, offices), commercial trust (towards goods, brands), technological trust, institutional trust (towards complex organisational entities), and systemic trust (directed at the entire social system – system, civilisation)[3]. Trust and distrust can take the form of an "atmosphere" or "climate" of trust or distrust, creating a "culture of trust" or its opposite, a "culture of distrust" (distrust syndrome). Bestowing credibility requires considering various criteria, particularly reputation, achievements, and physiognomy[4]. Therefore, trust as a relationship is the belief that another person or institution will not deceive us, and that the information provided is reliable and not manipulated. In the juridical dimension, constitutional loyalty is a legal norm derived in the form

[3] P. Sztompka, *Socjologia*, Kraków 2010, p. 312.

[4] *Ibidem*, p. 313.

of a directive influencing the interpretation of other provisions concerning the legal regulation of the relationship between the state and the citizen and between state authorities. The undertaking of disloyal behaviour by the subjects of a constitutional contractual relationship is preceded by actions aimed at disrupting the internal relationship between the parties to the relationship. The loyalty between the parties to the relationship is the glue that guarantees the proper performance of the obligation.

In the context of the constitutional obligation relationship, the question to what extent the obligation to comply with the law of the Republic of Poland, arising from Article 83 of the Constitution of the Republic of Poland, determines the scope of constitutional loyalty, requires an answer. Does it reduce the obligation of submission to a form of "convenient opportunism"[5]? The great practitioner and theorist of civil disobedience, Henry David Thoreau, ostentatiously refused to pay state taxes because he did not want to maintain a federal government that supported the slave trade. Thoreau wrote that one cannot "identify oneself with this government without a sense of disgust, which is at once my government and the government of slaves". After being summoned by a tax officer in Concord, Massachusetts, Thoreau refused and offered arrest to publicise the shameful practice of slavery. Thoreau insisted that "unjust laws exist: should we be content to obey them, or should we make an effort to change them, obeying them until we reach our goal, or should we

[5] H.D. Thoreau, *O obywatelskim nieposłuszeństwie*, Kraków 2021, p. 11.

break them at once?"[6] Classic examples of counteracting oppressive or racially discriminatory power are provided by the attitudes of Mahatma Gandhi or Martin Luther King.

Therefore, it is not only a question of the scope of the obligation only in the case of an unconstitutional law, but also of the scope of loyalty, both in the case of violation of the spirit of the Constitution and in the extreme case of – as Wojciech Mojski puts it – "qualified unconstitutionality as a form of unconstitutionality"[7]. The very notion of loyalty is useful in the context of protection against the so-called reverse systemic transition and protection against the transition from "liberal democracy" to "literal democracy"[8], as well as the answer to what extent this concept can be used in the context of the implementation of Loewenstein's concept of "militant democracy"[9].

Undoubtedly, the phenomena of nativism, populism, and authoritarianism are factors that deny the mechanisms and rights of a democratic state, which leads to the atrophy of the system of guarantees of freedom and subjectivity of citizens related to the judiciary, law enforcement bodies, freedom of the press, freedom of assembly, and the financing of non-governmental organisations. Symptomatic in

---

[6] *Ibidem*, p. 17.

[7] W. Mojski, *Kryzys konstytucyjny. Zagadnienia teorii konstytucji*, Lublin 2023, pp. 28–35.

[8] W. Sadurski, *A pandemic of populists*, Cambridge University Press 2022, p. 100.

[9] K. Loewenstein, *Militant Democracy and Fundamental Rights, I*, "The American Political Science Review" 1937, vol. 31, no. 3; *idem*, *Militant Democracy and Fundamental Rights, II*, "The American Political Science Review" 1937, vol. 31, no. 4.

the context of undermining the essence of democracy is the statement of Senior Marshal Kornel Morawiecki during the session of the Sejm on 25 November 2015: "The law is an important thing, but the law is not sacred. The good of the nation is above the law. If the law disturbs this good, we must not consider it as something that we cannot violate, that we cannot change. That's what I'm saying. The law is meant to serve us. A law that does not serve the nation is lawlessness"[10]. In this way, he reduced the will of the sovereign to the actual will of the voters, regardless of the voter turnout, while the ruling majority represented less than 19% of the electorate (5,711,687 votes out of 30,629,150 eligible voters), in fact giving it the features of ochlocracy. Another important politician of the United Right camp argued that Poland should be a Catholic confessional republic in which there is a "dictatorship of the Gospel", and there should be representatives of Christian churches in the upper chamber, with the majority participation of the Polish Episcopate. Krzysztof Szczerski went on to say that "democracy will either be religious or it will not be at all"[11]. It is hard not to see in these opinions – referring to Milan Kundera – systemic kitsch as a phenomenon insensitive to logical contradictions, able to combine incompatible elements to create a hybrid.

[10] Stenographic report from the 2nd sitting of the Sejm on 25 November 2015, p. 78.

[11] K. Szczerski, *Polska – republika wyznaniowa*, "Pressje" 2005, no. 5, p. 18. He further pointed out that "Christian morality, codified by the Catholic Church, is the only set of principles available to the common experience of Poles that can regulate the public sphere". *Ibidem*, p. 19.

Thinking *in genere* about the Constitution and loyalty to it should be a dilemma, and the experience of constitutionalism[12], including the issue of the limits of constitutional legislation in the context of supra-positive law and the durability of constitutional regulations in relation to adaptation to social changes, is of fundamental importance for its development.

Constitutional Obligations

In the context of the title issue, it is necessary to answer the question whether there are circumstances justifying resistance and whether resistance will lead to the removal of the cause, as well as the form of this resistance. Is it possible to find and establish criteria that allow for the demarcation of the boundary and the demarcation lines separating circumvention of the Constitution from its violation or qualified unconstitutionality from disobedience to the Constitution in case of extreme erosion or even atrophy of legal protection measures?

The obligation arising from Article 83 of the Constitution is the foundation of the rule of law as an expression of the guarantee of security with regard to the operation of public authorities. Marek Piechowiak points out that the obligation to oppose norms that are grossly unjust can also be derived from the duty of care for the common good arising

---

[12] J. Baszkiewicz, *O kilku dylematach konstytucyjnych w świetle historii* [in:] *Konstytucja RP. Oczekiwania i nadzieje*, eds. T. Bodio, W. Jakubowski, Warszawa 1997, p. 43.

from Article 82 of the Constitution[13]. No Polish citizen can be released from the constitutional duty of fidelity to the Republic of Poland and care for the common good or care for the "good of the Third Republic of Poland" resulting from the introduction to the Constitution, which is the axiological basis of the constitutional order[14]. Piotr Winczorek even calls this obligation "obvious"[15]. It is precisely the principle of the common good, arising from Article 1 of the Constitution, that is an expression of the anti-populist sense of constitutional democracy[16].

Moreover, everyone, regardless of whether they are a Polish citizen or not, is obliged to comply with the law of the Republic of Poland. Thus, the constitutional obligation to obey the law is the result of the obligations established by its norms. Therefore, the question is about the scope of this obligation, because, unlike the previous legislation, the current Constitution does not specify the obligation to comply with the Constitution, but refers to the law of the Republic of Poland as a whole. It does not align with the Polish

---

[13] M. Piechowiak, *Komentarz do art. 82* [in:] *Konstytucja RP. Komentarz*, vol. I, eds. M. Safjan, L. Bosek, Warszawa 2016, pp. 1873–1874.

[14] The normative role of the preamble to the Constitution is normative, as it imposes a particular direction of interpretation of specific provisions. Judgment of the Constitutional Tribunal of 15 September 1999, K 11/99.

[15] P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2000, p. 105.

[16] R. Piotrowski, *Populizm i antypopulizm – perspektywa konstytucyjna* [in:] *Prawo w epoce populizmu*, ed. P. Grzebyk, Warszawa 2023, p. 132.

constitutional tradition. According to Article 90 of the March Constitution of 1921, every citizen had the obligation to respect and comply with the state and other applicable laws and regulations of state and local authorities. Article 76 of the Constitution of the Polish People's Republic of 1952 stated that "A citizen of the Polish People's Republic is obliged to comply with the provisions of the Constitution and laws". By determining the obligation to comply with the law of the Republic of Poland as conduct consistent with its provisions, the obligation set out in Article 83 of the Constitution of the Republic of Poland, despite the omission to specify normative acts. This obligation applies to national law, which, by virtue of Article 91(1) and (2) of the Constitution, also includes the provisions of international law. It is clear that this obligation applies only to the provisions of generally applicable law. Despite the failure to emphasise the obligation to comply with the Constitution, the obligation to comply with the Constitution arises from the position of this act in the system of sources of law (Article 8 of the Constitution)[17]. Therefore, the conformity of legislation (the sources of law in question) with the Constitution determines its legality, and thus its validity. What, then, determines the obligation to comply with the law? Is a citizen exempt from the obligation to comply with it if a provision is inconsistent with the Constitution? If so, since when? Is it from the loss of force? The Polish Constitution does not explicitly establish a civic duty of fidelity to the Constitution, as is the case with

[17] K. Działocha, A. Łukaszczuk, *Uwagi do art. 83 Konstytucji* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. II, eds. L. Garlicki, M. Zubik, Warszawa 2016, p. 959.

the Constitution of the Italian Republic of 1947 (Article 54) or the Constitution of Greece of 1975 (Article 120(2)).

The addressee of the obligation specified in Article 83 of the Constitution is everyone, i.e., not only a citizen of the Republic of Poland, but also foreigners residing in Poland. This obligation also applies to legal persons. Therefore, does the general obligation arising from this provision of the Constitution give rise to a review of the constitutionality of the provisions? The Constitutional Tribunal in its judgment of 27 May 2002[18] indicated that this provision cannot constitute an independent basis for formulating the obligations of an individual. However, the Tribunal emphasised that certain constitutional norms (e.g., those resulting from Articles 1, 2, and 30 of the Constitution) create the axiological and normative foundations of the legal system. Therefore, if a particular provision violates these grounds, it should not belong to the legal system, and the obligation to comply with it under Article 83 of the Constitution is contrary to the Constitution, which may be treated as a violation of Article 83 of the Constitution. This jurisprudence of the Constitutional Tribunal allows us to ask the question not only about the limits of loyalty, obedience to the law in force, including grossly unjust and wicked law, but also about civil disobedience and the right to resist. The authors of the 1997 Constitution did not foresee civic forms of expression in the face of such situations, considering that the declared system based on the rule of law and an extensive constitutional catalogue of individual freedoms and rights with a system of its guarantees (control of hierarchical control of norms – Articles 79, 188, 193

[18] Ref. No. K 20/01.

of the Constitution; administrative judiciary – Article 184 of the Constitution; liability for damage caused by unlawful actions of a public authority – Article 77(1) of the Constitution; lack of binding courts by sub-statutory acts in the event of their inconsistency with the Constitution or the Act – Article 178(1) of the Constitution).

The constantly recurring question about the model of constitutional review of law, highlighted in connection with the constitutional crisis in Poland, provokes the question of the monopoly of the Constitutional Tribunal in terms of its competence to review the constitutionality of laws. The said state of affairs leads to an evolution in the scope of recognising as admissible incidental review of constitutionality exercised by courts justified by the doctrine of necessity[19] or sometimes constitutes a justification for acting in a state of higher constitutional necessity[20]. One of the forms of constitutional loyalty based on the principle of direct application of the Constitution is the so-called doctrine of necessity, which assumes that the power to review the constitutionality of provisions is linked in connection with the occurrence of special, extraordinary circumstances which prevent the Constitutional Tribunal from performing its basic

[19] P. Mikuli, *Doktryna konieczności jako uzasadnienie dla rozproszonej kontroli konstytucyjności ustaw w Polsce*, "Gdańskie Studia Prawnicze" 2018, vol. X, pp. 635–648; A. Rytel-Warzocha, *Jak nie Trybunał Konstytucyjny to co? O rozproszonej kontroli konstytucyjności prawa w Polsce*, "Przegląd Prawa Konstytucyjnego" 2022, no. 3, pp. 25–37.

[20] M. Pach, M. Małecki, *Stan wyższej konieczności konstytucyjnej*, "Państwo i Prawo" 2018, no. 7, pp. 38–57.

systemic function[21], i.e., taking protective measures against the rule of law, which does not provide grounds for a transformation of the rule of law (*Rechtsstaat*) into the judges' state (*Richtersstaat*). In an extraordinarily ordinary situation, we can speak of constitutional impotence resulting from, e.g., the Potemkin-like role of the Polish constitutional court and the imitative role of the political system after 2016.

Ius resistendi and Civil Disobedience as an Extra-Constitutional Subjective Right?

Both the right to resist and civil disobedience affect the question of loyalty to the Constitution. However, these institutions hide a variety of regime and political situations. The first issue to be raised concerns the validity of a legal norm, i.e., the state of being in which elements of a specific situational context of its formulation persist, such as the readiness of the addressees to obey and the recognition that the obligation to behave in a certain way is duly justified. The criteria for recognising that a given norm is valid include thetic, axiological, and behaviourist dimensions. In principle, the validity of the law requires interdependence, whether explicit or implicit, of its theoretic justification (recognition in institutional forms), axiological justification, and its social effectiveness (behaviourist)[22]. In this context, it should be recalled that the Polish Constitution does not recognise the subjective right to object to illegal

[21] A. Rytel-Warzocha, *Jak nie Trybunał…*, pp. 33–34.

[22] Z. Ziembiński, *Wstęp do aksjologii dla prawników*, Warszawa 1990, p. 138.

legal regulations. There is no doubt that the right to resist is not the best guarantee of the protection of rights. The right to resist is known in the legislation of other countries, e.g., Germany[23], Greece[24], Portugal[25], Estonia[26], the Czech Republic[27],

[23] According to Article 20(4) of the Basic Law of the Federal Republic of Germany of 1949, as amended by the Law of 24 June 1968, all Germans have the right to resist anyone who attempts to overthrow the constitutional order, if no other means of counteracting is possible. *The Constitution of Germany*, Warszawa 2008.

[24] According to Article 120(4) of the 1975 Constitution of Greece, "The observance of the Constitution is entrusted to the patriotism of the Greek people, who have the right and duty to oppose by all means anyone who would seek to overthrow it by force". *The Constitution of Greece 1976/1985*, Warszawa 1992.

[25] According to Article 21 of the 1974 Constitution of the Portuguese Republic, the right to resistance is a fundamental right – "Everyone has the right to resist orders that violate their rights, freedoms and guarantees, and to resist by force all forms of aggression if it is not possible to appeal to public authorities". *The Constitution of the Portuguese Republic*, Warszawa 2000.

[26] According to § 54 of the Constitution of the Republic of Estonia, "It is the duty of an Estonian citizen to be faithful to the constitutional system and to defend the independence of Estonia. Every citizen has the right, in the absence of other means, to oppose attempts to change the constitutional system by force". *The Constitution of Estonia*, Warszawa 2008.

[27] According to Article 23 of the Charter of Fundamental Rights and Freedoms of 1992 (which forms part of the constitutional order of the Czech Republic), "Citizens have the right to resist anyone who rejects the democratic order of human rights and fundamental freedoms enshrined in the Charter if the activities of constitutional bodies and the application of statutory measures prove impossible". Therefore, that power is secondary; it is a collective ultima ratio of

Slovakia[28], and Lithuania[29]. The essence of *jus resistendi* consists in civil resistance in unspecified forms, including the use of force against regulations (lawlessness) violating the constitutional system, and particularly the freedoms and rights of the individual in the case when the means of protecting the system (constitutional order) prove ineffective. The authors of the Polish Constitution failed to establish the right to resistance as a circumstance exempting from the obligation to comply with the law of the Republic of Poland. It was decided that in the conditions of a democratic state it was unnecessary to define it. Nowadays, the right to resist derives directly from the principle of a democratic state governed by the rule of law and the related principle of limiting power, constituting a barrier protecting human rights against

---

a defensive nature. *The Constitution of the Czech Republic*, Warszawa 2000.

[28] The right of defence under Article 32 of the Constitution of the Slovak Republic is set out in the following wording: "Citizens have the right to resist anyone who would reject the democratic order of fundamental human rights and freedoms as provided for in this Constitution if the operation of the authorities and the effective application of statutory measures become impossible". *The Constitution of the Slovak Republic*, Warszawa 2003.

[29] According to Article 3 of the Constitution of the Republic of Lithuania of 1992, "The sovereignty of the Nation shall not be diminished or restricted. No one is allowed to usurp the sovereign power of the Nation. The nation and every citizen have the right to resist anyone who forcibly attacks the independence of the State of Lithuania, the integrity of its territory or the constitutional system". Thus, the right to resist is defensive and individual. *The Constitution of the Republic of Lithuania*, Warszawa 2000.

unlawful interference by the authorities, even democratically legitimised ones, and the principle of the sovereignty of the nation, resulting from Article 4(1), understood as the actual and causative undertaking of actions aimed at restoring the constitutional order[30].

A distinction must be made between the right to resist and the right to civil disobedience, which has been developed in doctrine and social practice in the United States[31]. The right to resist is defined as the openly manifested disobedience to the law in force after exhausting the available protective measures, resulting from a moral, non-violent social motivation with a full readiness to bear legal responsibility to change the existing legislation. Regarding the civil right of disobedience, too, the Constitution does not establish a normative basis for recourse to it. In the doctrine, it points out that the "Constitution, by establishing democratic mechanisms for creating and amending the law so that it is socially acceptable, an extensive system of protection of freedoms and rights placed at the disposal of the individual (the right to a court, to a constitutional complaint, to a petition), does not create an ideological basis for the behaviour that is included in the concept of civil disobedience. It is also opposed by extra-constitutional considerations, practices that anarchise

---

[30] R.T. Skowron, *Konstytucyjne prawo do oporu w Europie. Opracowanie prawnoporównawcze*, "Przegląd Prawa Konstytucyjnego" 2023, no. 3, pp. 47–48.

[31] H.D. Thoreau, *O obywatelskim…*; W. Lang, J. Wróblewski, *Sprawiedliwość społeczna i nieposłuszeństwo obywatelskie w doktrynie politycznej USA*, Warszawa 1984.

public life in Poland, and threaten the state of the rule of law in the country"[32]. Today, this view appears almost as anachronistic as it is naïve in the context of the Polish constitutional crisis. The legal remedies at the disposal of an individual in connection with the violation of his constitutional rights and freedoms, regulated in the Constitution, cannot be regarded as an expression of civil disobedience. Although the Constitution does not explicitly grant citizens the right to resist, it does not mean that citizens cannot oppose regulations characterised by injustice and wickedness. As Monika Florczak-Wator points out, "such a right may be derived from the general principles of the Constitution, such as the principle of the common good, the principle of a democratic state governed by the rule of law, and the principle of protection and respect for human dignity"[33].

Moreover, a distinction must be made between the resistance which is expressed in a situation where the authorities have violated the legal order by their arbitrary acts. Such resistance is a defence of a violated law. In such a case, the assessments can take a positive-legal form. In a situation where the authorities have degenerated the legal order in whole or in part, turning it into a system of lawlessness, then resistance to oppression means questioning the legal

---

[32] K. Działocha, A. Łukaszczuk, *Uwagi do art. 83 Konstytucji* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. II, eds. L. Garlicki, M. Zubik, Warszawa 2016, p. 963.

[33] M. Florczak-Wątor, *Uwagi do art. 82 Konstytucji* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2019, p. 272.

order, which results in the impossibility of applying positive legal criteria[34].

In the context of the limits of constitutional loyalty, the right to resistance should be treated as the right to take actions aimed at restoring the constitutional order and preventing its violations through justified but illegal actions. The purpose of the power of resistance is to ensure that the principles that make up the system are applied, not to change them[35]. It should be distinguished from the right to rebellion, the purpose of which is to change and transform the political order, not to preserve it[36]. Radosław Skowron points out that the "constitutional right to resistance becomes an element of defence against the revolution and itself acquires the character of a legal, constitutional counter-revolution"[37]. It is a manifestation of considering the achievements of the European constitutionalism of democratic states (*acquis constitutionnel*). Constitutional fidelity requires that the "hard core" of the rule of law not be violated, which is the result of a balance of two constitutional values: the dignity of the empowered and autonomous individual, and

---

[34] J. Baszkiewicz, *Z zagadnień nowożytnej koncepcji prawa od oporu* [in:] *idem*, *Państwo. Rewolucja. Kultura polityczna*, Poznań 2009, p. 621.

[35] T. Ginsburg, D. Lansberg-Rodriguez, M. Versteeg, *When to overthrow your government: the right to resist in the world's constitutions*, "UCLA Law Review" 2013, no. 60, p. 1193.

[36] Y. Razmetaeva, *The right to resist and the right of rebellion*, "Jurisprudence" 2014, no. 3, pp. 758–784; T. Honoré, *The right to rebel*, "Oxford Journal of Legal Studies" 1988, vol. 8, no. 1, p. 3454.

[37] R.T. Skowron, *Konstytucyjne prawo…*, p. 41.

the social contract that constitutes the relationship between such individuals and the public authority[38]. Thus, the prohibition of arbitrary actions of the authorities towards citizens, as well as the obligation of public authorities to respect human rights, constitute an inviolable minimum in the content of the constitutional concept of the rule of law[39]. As Wojciech Sokolewicz and Marek Zubik point out, the principle of a democratic state governed by the rule of law "entails the right of citizens to oppose usurpers of public authority. The people, if necessary, can even overthrow tyrants by force", a broad understanding of the principle of a democratic state under the rule of law associated with the principles of popular sovereignty and the common good, also places the citizens of the Republic of Poland on guard of the Constitution[40].

The Limits of Loyalty

The limits of constitutional loyalty are extremely difficult to grasp. On the one hand, the obligation to comply with the law is universal and, in principle, absolute. However, this concept should be applied to those regulations that

---

[38] J. Mikołajewicz, M. Smolak, *Zasada demokratycznego państwa prawnego w aksjologii Konstytucji Rzeczypospolitej Polskiej* [in:] *Zasada demokratycznego państwa prawnego w Konstytucji RP*, ed. S. Wronkowska, Warszawa 2006, p. 94.

[39] W. Sokolewicz, M. Zubik, *Uwaga 6 do art. 2 Konstytucji* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, eds. L. Garlicki, M. Zubik, Warszawa 2016, p. 102.

[40] *Ibidem*, pp. 124–125.

meet the minimum standards allowing for the recognition that they meet the axionormative criteria[41]. The obligation to comply with the law is also functional from the point of view of the legal system's stability. The very construction of resistance must take an extraordinarily ordinary form, allowing, as Marcin Niemczyk points out, that "in countries affected by the processes of reverse systemic transition, such a construction may have a protective character against the transformation of these systems into quasi-authoritarian or quasi-totalitarian forms"[42]. Thus, only the assumption that there has been no obvious and gross violation of the Constitution provides grounds for the assumption of an absolute obligation to comply with the law, inscribing itself in Karl Loewenstein's concept of "democracy capable of defending itself". However, it should be emphasised that it is necessary to use available, non-façade legal means to assess the "fairness of the law" from the point of view of the standard set out in Article 2 of the Constitution.

The limits of constitutional loyalty are determined by the degree of its violation. The doctrinally shaped criteria for violations of the Constitution in the juridical dimension range from unconstitutionality to qualified unconstitutionality. Wojciech Brzozowski points out that an "infringement (violation) of the Constitution consists in an act or omission inconsistent with the content of the disposition of an absolutely binding constitutional norm, under the conditions

---

[41] M. Niemczyk, *Idea niegodziwości prawa a konstytucyjny obowiązek jego przestrzegania*, "Przegląd Prawa Konstytucyjnego" 2022, no. 6, p. 137.

[42] *Ibidem*, p. 138.

defined by its hypothesis. Thus, it may consist in undertaking a conduct prohibited by a constitutional norm or in failing to carry out the conduct prescribed by it. Violation of the Constitution (*contra constitutionem*) is a form of non-compliance with the Constitution and should be distinguished from circumvention of the Constitution (*praeter constitutionem*). The latter is the case when the application of a given constitutional norm leads to the achievement of an objective prohibited by another constitutional norm"[43]. Therefore, a violation of the Constitution is gradable, which allows for the assumption that it can take the form from a minor violation to a gross violation of the Constitution[44], i.e., a qualified form of violation of a provision. In the Official Collection of the judgment of the Constitutional Tribunal of 11 August 2016, which has not been published in the Journal of Laws and has been removed from the Jurisprudence of the Constitutional Tribunal[45]. The Tribunal explicitly states that suspending or obstructing the immediate publication of the Tribunal's judgment in the Journal of Laws is a clear and qualified infringement of Article 190(2) of the Constitution.

The criterion of gradation of unconstitutionality can also be found in the *votum separatum* to the judgment of the Constitutional Tribunal of 7 May 2014[46], in which Judge

---

[43] W. Brzozowski, *Stopniowalność naruszeń konstytucji*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2017, iss. 4, p. 5; *idem*, *Obejście konstytucji*, "Państwo i Prawo" 2014, no. 9.

[44] The concept of a gross violation of the Constitution or a statute can be found, for example, in Article 171(3) of the Constitution.

[45] Ref. No. K 39/16.

[46] Ref. No. K 43/12.

Zbigniew Cieślak, pointing to the necessity of introducing a procedure of gradation of the violation of the Constitution, took the position that the legislator may violate the Constitution either to a qualified or an ordinary degree. An aggravated violation of the Constitution occurs when, of course, Article 1 of the Constitution is necessarily and immanently violated. If a statute to some extent verges on or violates Article 1 of the Constitution, it indicates the need to consider the fact that a situation of aggravated violation of the Constitution will arise. In an attempt to define aggravated violations, he emphasises formal violations (consisting in the irremediable effects of a gross violation of the law-making procedure) and substantive violations, characterised by three features: simultaneous, structural (there are systemic dependencies between individual values), and full (full violation of the values identifying the basis for the review of compliance with the Constitution and corresponding to these values of obligation). Zbigniew Cieślak concludes that the "violation of the Constitution consists not only in directly violating the indicated values or significantly limiting these values, but also in generating dysfunctional states that disrupt the relations between values. The consequences of an aggravated violation of the Constitution are as follows: 1) the violation harms the Republic of Poland as a systemic emanation of Poland in the literal sense taken from the preamble to the Constitution; (2) abolishes the citizen's identification with the state or significantly threatens it; 3) significantly disturbs the harmony of communities in the state; 4) deconstructs people's attitudes of solidarity; 5) undermines the cultural and civilisational foundations of national identity". Presenting the notion of gradation of

unconstitutionality, Wojciech Brzozowski points to the need to consider two basic factors: "1) the significance (weight) of the norm violated against the background of the totality of constitutional norms and 2) the depth of the violation of the constitutional norm, which should be understood as the extent to which its normative consequences are abolished by an act of enacting or applying the law that is inconsistent with it"[47]. Undoubtedly, constitutional norms, even though they are explicitly not formally hierarchical, differ from each other in their structure and function in the legal order of the state[48]. In this context, attention should be paid to norms of particular importance, which are an expression of the state's constitutional identity. On the other hand, in the context of the question of the depth of the violation of the norm, one should consider the "violation of the essence of freedoms and rights" resulting from the second sentence of Article 31(3) of the Constitution[49], as well as violation of constitutional provisions prohibiting any interference with freedom or law (Article 39 or 40 of the Constitution). Therefore, a manifestation of the constitution-maker's axiological preferences is the inadmissibility of restricting certain constitutional rights in case of the introduction of the state of emergency.

---

[47] W. Brzozowski, *Stopniowalność naruszeń*…, p. 13.

[48] K. Działocha, *Hierarchia norm konstytucyjnych i jej rola w rozstrzyganiu kolizji norm* [in:] *Charakter i struktura norm konstytucji*, ed. J. Trzciński, Warszawa 1997, p. 91.

[49] A. Niżnik-Mucha, *Zakaz naruszania istoty konstytucyjnych wolności i praw w Konstytucji Rzeczypospolitej Polskiej*, Warszawa 2014, p. 322.

A category that has been shaped doctrinally since the first works of Carl Schmitt, i.e., the idea of constitutional identity (identification with the basic structure), may also be helpful in assessing the degree of violations. Thus, constitutional identity is the warp, a kind of "constitutional core", which acts as a "fuse" or "touchstone" of the changes[50]. Therefore, constitutional identity reflects the values on which the Constitution is based[51]. It constitutes an axiological and constitutional *benchmark*, a reference point for determining the end of constitutional loyalty. Although nowadays the concept of the inviolable identity of the Constitution is considered in some countries in the context of the implementation of a defence function in the face of integration in the European Union[52], it can also be used to delineate the boundaries of obedience or loyalty to the basic law. The concept of immutable provisions and the related hierarchy of constitutional provisions is known to the constitutionalism of some countries (e.g., Germany, Portugal, the Czech Republic, or Romania by enumerating the most important spheres of the constitutional order, or in Norway, where the definition of these

---

[50] M. Granat, *Tożsamość konstytucji* [in:] *Zmieniać Konstytucję Rzeczypospolitej czy nie zmieniać? 58. Ogólnopolski Zjazd Katedr Prawa Konstytucyjnego. Zamość, 2–4 czerwca 2016 r.*, ed. D. Dudek, Lublin 2017, p. 43.

[51] L. Garlicki, *Normy konstytucyjne relatywnie niezmienialne* [in:] *Charakter i struktura norm Konstytucji*, ed. J. Trzciński, Warszawa 1997, p. 148.

[52] L. Garlicki, *Konstytucyjność zmiany konstytucji* [in:] *Zmieniać Konstytucję Rzeczypospolitej czy nie zmieniać? 58. Ogólnopolski Zjazd Katedr Prawa Konstytucyjnego. Zamość, 2–4 czerwca 2016 r.*, ed. D. Dudek, Lublin 2017, p. 28.

spheres takes the form of a general clause – amendments may concern modifications of individual provisions that do not change the Constitution's spirit). The 1997 Constitution does not explicitly contain any "immutable provisions". However, it adopts a differentiated mode of amendment, creating a hindrance to the provisions amending Chapters I, II, and XII. However, they are procedural. It should be noted that the very changeability of the Constitution is a desirable feature of the legal system, as it enables it to evolve and adapt by the state to the changing internal and external realities. We must not lose sight of the fact that constitutional immutability enforced by excessive rigidity is harmful by limiting legal changes in the state system, which result in taking on an anti-systemic or even revolutionary character, and ultimately may result in attempts to change the system by unconstitutional means or even by illegal methods[53].

However, as M. Florczak-Wator points out, the "text of the Constitution thus makes it possible to reconstruct the axiological system existing outside the text, adopted by the constitution-maker for its needs"[54]. The limits of constitutional loyalty are determined by the effective guarantee of the rudimentary principles of the political system (Articles 1, 2, and 30 of the Constitution), i.e., the "hard core" of the Constitution, which make up the *essentialia negotii* of the social contract. The identity of the Constitution is also revealed when the action of the ordinary legislator leads to changes in

---

[53] R. Grabowski, *About the Need for Constitutional Variability*, "Studia Iuridica Lublinensia" 2022, no. 5, p. 60.

[54] M. Florczak-Wątor, *Horyzontalny wymiar praw konstytucyjnych*, Kraków 2014, p. 230.

the constitutional matter, despite the lack of formal changes (amendments) to the Constitution. We are then dealing with a "disguised amendment of the Constitution" or a "transformation of the Constitution"[55], or a "pseudo-constitutional path"[56]. The essence of the notion of amending the Constitution goes beyond the regulation set out in Article 235. Constitutional identity allows for the hierarchy of constitutional principles and the determination of the "guarantee function" of constitutional provisions[57], or for the differentiation of cardinal constitutional rights[58]. Thus, the purpose of constitutional identity is to protect the Constitution in the context of rudimentary systemic principles (human dignity – Article 30, freedom – Article 31, right to life – Article 38). These principles are the carriers of constitutional identity. It is precisely because of identity – as Mirosław Granat points out – that "not everything is permitted" when it comes to the interpretation of the Constitution[59], as well

---

[55] *Zasady zmiany konstytucji w państwach europejskich*, eds. S. Grabowska and R. Grabowski, Warszawa 2013, p. 13.

[56] S. Rozmaryn, *Konstytucja jako ustawa zasadnicza Polskiej Rzeczypospolitej Ludowej*, Warszawa 1967, pp. 274–275; L. Garlicki, *Normy konstytucyjne relatywnie niezmienialne* [in:] *Charakter i struktura norm Konstytucji*, ed. J. Trzciński, Warszawa 1997, p. 149.

[57] Judgment of the Constitutional Tribunal of 27 April 2005, ref. no. P1/05.

[58] Judgment of the Constitutional Tribunal of 24 November 2010, ref. no. K 32/09.

[59] M. Granat, *Tożsamość konstytucji* [in:] *Zmieniać Konstytucję Rzeczypospolitej czy nie zmieniać? 58. Ogólnopolski Zjazd Katedr Prawa Konstytucyjnego. Zamość, 2–4 czerwca 2016 r.*, ed. D. Dudek, Lublin 2017, p. 61.

as changes involving constitutional matters introduced by means of statutes. Thus, identity plays the role of an axiological map delineating the permissible vector of constitutional changes. While the complete immutability of the Constitution (an evolutionary change, for example in the European context) would be unimaginable, the apparent, imitative statutory changes remain protected by constitutional identity, which, despite the difficulty of defining its semantic field, boils down to the core, i.e., refers to values and tradition. The Constitution is not only a special kind of legal act, but it defines a "special kind of social and political order"[60]. Regardless of some ambiguity in the construct of constitutional identity, the principles concerning the status of the individual in the state are considered its essential element[61]. A special form of expression of identity is the constitutional preamble, which presents the Polish nation as a civic political community and the ideals that guide it[62]. In its judgment of 8 April 1998, the Constitutional Tribunal stated that: "However, if the Constitution imposes on the legislator the obligation to enact law in accordance with requirements of such a general nature as a democratic state governed by the rule of law or the citizen's trust in the state, it orders the Constitutional

[60] C. Schmitt, *Nauka o konstytucji*, Warszawa 2013, p. 28.

[61] A. Niżnik-Mucha, *Tożsamość konstytucyjna a relatywizacja ochrony praw człowieka* [in:] *Interdyscyplinarny wymiar tożsamości konstytucyjnej*, eds. M. Florczak-Wątor, M. Krzemiński, Kraków 2022, p. 55.

[62] M. Granat, *Constitutional Identity and its Functions*, "Przegląd Prawa Konstytucyjnego" 2022, no. 2, p. 82.

Tribunal to intervene in all cases where the legislator exceeds the scope of its regulatory discretion in such a drastic manner, that the infringement of those constitutional clauses becomes evident"[63].

The lack of effective safeguards allowed Locke to answer who should be the judge adjudicating whether the power had been properly used. He pointed out that "between the continuously functioning executive power, which has such a prerogative, and the legislature, dependent on the will to convene it, there can be no earthly judge. Neither can it be between the legislature and the people; for the executive or legislature, as soon as it has its hands on power, may seek and tend to enslave or destroy it. The people then, as in all such situations, where there is no earthly judge, have no choice but to appeal to heaven. By carrying out such attacks, the rulers exercise a power that the people have never placed in their hands (after all, it cannot be assumed that they have consented to someone exercising power over them and causing them harm), and so they are doing something to which they are not entitled. Where the whole people or one person is deprived of their powers, or where they are under the authority of a person not entitled to exercise them, and there is no possibility of appeal to anyone on earth, the people are left only free to appeal to heaven when they deem it sufficiently valid"[64]. He goes on to point out that the "people, although they cannot be judges here, because by virtue of the Constitution of society, there is no longer a higher power to decide and to

[63] Ref. No. K 10/97.

[64] J. Locke, *Dwa traktaty o rządzie*, Warszawa 2015, pp. 355––356.

render effective judgments in such matters, yet by virtue of the primitive and fundamental law, the people, in relation to all human positive laws, have reserved for themselves the final decision which belongs to the human race, when there is no longer any possibility of appeal on earth for the purpose of adjudication, whether he has a just reason to appeal to the heavens"[65]. Roberto L. Blanco Valdés aptly but bitterly notes that the answer is as clear as it is unsatisfactory[66].

Conclusion

The authority of the Constitution legitimises voluntary constitutional obedience. Therefore, every authority takes legitimate actions within the limits of the authorisation resulting from the social contract, and the purpose of its action is concern for the common good. Rebellion against the degenerate authority is a civic duty, and its manifestation is the vindication of rights and freedoms. *Nolens volens*, modern democracy is the heir to the tradition of the Enlightenment, according to which freedom includes the rule of rational law, and is therefore not so much connected with the rule of the people, but with disagreement with the authority that exercises it in a despotic way[67].

---

[65] *Ibidem*, p. 356.

[66] R.L. Blanco Valdés, *El valor de la Constitución*, Madrid 2006, p. 65.

[67] S. Filipowicz, *Kryzys demokracji i powracająca groźba przemocy* [in:] *Obronność państwa. Uwarunkowania oraz organizacja bezpieczeństwa i obronności*, eds. Z. Trejnis, M. Marciniak, Toruń 2016, p. 27.

From the perspective of the subject of considerations, it is important to perform an integrative role, i.e., to initiate and maintain the identification of the citizen with the state, as well as the axiological function remaining in an organic relationship with it, petrifying essential social and legal values, drawing its foundations from the inherent, inalienable, and inviolable dignity of the human being (Article 30 of the Constitution)[68]. Therefore, it is necessary to refer to Gadamer's notion of *sensus communis*, and thus search for a community of change, to undertake appropriate interpretative procedures. The basis for building such an agreement may be the constructions of *overlapping consensus* and *reflective equilibrium*, which build constitutional identity, constituting something more than parchment barriers to a written Constitution. It is not the role of the Basic Law to be a governess of good taste and a culture of public debate, but to protect civil rights and freedoms. Nevertheless, constitutional identity sets insurmountable limits to departing from the legislative *fiat* established by the legislature.

The title issue denotes a certain category of behaviour unacceptable from the point of view of constitutional identity, going beyond the particularly important values of the good, which are carried by basic constitutional principles. The mentioned categories allow the communicative value of the Basic Law to be maintained. The delineation of the eponymous constitutional loyalty results from the refusal to recognise the protean role of the Constitution in a democratic state

[68] The Constitutional Tribunal in its judgment of 30 September 2008 (K 44/07) treats human dignity as the supreme constitutional value.

governed by the rule of law. The entropy of constitutional loyalty, i.e., the degradation of the bond between citizens and the Constitution, is a phenomenon that underlies institutional dysfunctions. Thus, the lack of an effective guarantee of fundamental rights and the system of checks and balances that are the function of modern constitutions leads to an internal "unconstitutional constitution"[69]. They lead to a violation of the axiological foundation of the political community – peaceful coexistence or the "material matrix of the entire social order"[70].

The principle of a democratic state governed by the rule of law, as set out in Article 2 of the Constitution, together with the principle of the common good (Article 1), subsidiarity, and solidarity resulting from the right to enter and the protection of human dignity and freedom (Article 30, Article 31(1)), including in particular the statutory requirement to restrict freedoms and rights or equality before the law and the prohibition of discrimination (Article 32(1) and (2)) constitute a coherent system preventing the formation of constitutional axiological nihilism. It is complemented by a derivative principle resulting from the principle of a democratic state governed by the rule of law, i.e., the principle of loyalty of the state to its citizens (derived from international law – *pacta sunt servanda*), as well as the right to fair trial, the right to a fair trial, and the principle of statutory specificity of prohibited acts and penalties. They mark

---

[69] https://archive.nytimes.com/krugman.blogs.nytimes.com/2012/01/02/the-unconstitutional-constitution/ (12.11.2023).

[70] E.W. Böckenförde, *Historyczny rozwój i różne znaczenia pojęcia konstytucji*, "Civita. Studia z Filozofii Polityki" 1997, no. 1, p. 31.

the boundaries of the identity of constitutional democracy, beyond which comes the field occupied by the sterile constitutionalism of illiberal democracy. The limits of constitutional loyalty are determined by the effectiveness of the Fundamental Law's function of guarantee, integration, and stabilisation. Thus, the violation of the axiological fundamental foundations of the functioning of the political community, which is one of the elements of the "constitutional minimum"[71], renders the obligation to loyalty obsolete. The transplantation of undemocratic and anti-liberal content results in axiological stratification and depreciation of the Constitution itself, which is not, because it simply cannot be, axiologically neutral. Consequently, in a situation where the authorities turn their backs on the idea of constitutional democracy, especially in the area of fundamental rights, citizens are no longer bound by the principle of constitutional loyalty. In the preamble to the Constitution, the constitution-maker unequivocally expressed his "desire" to "guarantee civil rights forever".

---

[71] Z. Kędzia, *Uwagi o aksjologii Konstytucji* [in:] *Prawa człowieka w społecznościach obywatelskich*, ed. A. Rzepliński, Warszawa 1993, p. 25. Zdzisław Kędzia also includes the "constitutional minimum" as: regulations concerning the organisation of public authorities, the definition of mechanisms guaranteeing the separation of power and counteracting its concentration, shaping the principles of the way in which the society participates in making decisions regarding the affairs of the community, and guaranteeing the position of the individual (his autonomy) in relations with state authorities.

Literature

Baszkiewicz J., *O kilku dylematach konstytucyjnych w świetle historii* [in:] *Konstytucja RP. Oczekiwania i nadzieje*, ed. T. Bodio, W. Jakubowski, Warszawa 1997.

Baszkiewicz J., *Z zagadnień nowożytnej koncepcji prawa od oporu* [in:] J. Baszkiewicz, *Państwo. Rewolucja. Kultura polityczna*, Poznań 2009.

Blanco Valdés R.L., *El valor de la Constitución*, Madrid 2006.

Böckenförde E.W., *Historyczny rozwój i różne znaczenia pojęcia konstytucji*, "Civita. Studia z Filozofii Polityki" 1997, no. 1.

Brzozowski W., *Obejście konstytucji*, "Państwo i Prawo" 2014, no. 9.

Brzozowski W., *Stopniowalność naruszeń konstytucji*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2017, no. 4.

Czarnowski S., *Kultura* [in:] *Dzieła*, vol. 1, Warszawa 1956.

Działocha K., *Hierarchia norm konstytucyjnych i jej rola w rozstrzyganiu kolizji norm* [in:] *Charakter i struktura norm konstytucji*, ed. J. Trzciński, Warszawa 1997.

Działocha K., Łukaszczuk A., *Uwagi do art. 83 Konstytucji* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. II, eds. L. Garlicki, M. Zubik, Warszawa 2016.

Filipowicz S., *Kryzys demokracji i powracająca groźba przemocy* [in:] *Obronność państwa. Uwarunkowania oraz organizacja bezpieczeństwa i obronności*, eds. Z. Trejnis, M. Marciniak, Toruń 2016.

Florczak-Wątor M., *Horyzontalny wymiar praw konstytucyjnych*, Kraków 2014

Florczak-Wątor M., *Uwagi do art. 82 Konstytucji* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2019.

Garlicki L., *Konstytucyjność zmiany konstytucji* [in:] *Zmieniać Konstytucję Rzeczypospolitej czy nie zmieniać? 58. Ogólnopol-*

ski Zjazd Katedr Prawa Konstytucyjnego. Zamość, 2–4 czerwca 2016 r., ed. D. Dudek, Lublin 2017.

Garlicki L., *Normy konstytucyjne relatywnie niezmienialne* [in:] *Charakter i struktura norm Konstytucji*, ed. J. Trzciński, Warszawa 1997.

Ginsburg T., Lansberg-Rodriguez D., Versteeg M., *When to overthrow your government: the right to resist in the world's constitutions*, "UCLA Law Review" 2013, no. 60.

Grabowski R., *About the Need for Constitutional Variability*, "Studia Iuridica Lublinensia" 2022, no. 5.

Granat M., *Constitutional Identity and its Functions*, "Przegląd Prawa Konstytucyjnego" 2022, no. 2.

Granat M., *Tożsamość konstytucji* [in:] *Zmieniać Konstytucję Rzeczypospolitej czy nie zmieniać? 58. Ogólnopolski Zjazd Katedr Prawa Konstytucyjnego. Zamość, 2–4 czerwca 2016 r.*, ed. D. Dudek, Lublin 2017.

Honoré T., *The Right to Rebel*, "Oxford Journal of Legal Studies" 1988, vol. 8, no. 1.

Kędzia Z., *Uwagi o aksjologii Konstytucji* [in:] *Prawa człowieka w społecznościach obywatelskich*, ed. A. Rzepliński, Warszawa 1993.

Lang W., Wróblewski J., *Sprawiedliwość społeczna i nieposłuszeństwo obywatelskie w doktrynie politycznej USA*, Warszawa 1984.

Locke J., *Dwa traktaty o rządzie*, Warszawa 2015.

Loewenstein K., *Militant Democracy and Fundamental Rights, I*, "The American Political Science Review" 1937, vol. 31, no. 3.

Loewenstein K., *Militant Democracy and Fundamental Rights, II*, "The American Political Science Review" 1937, vol. 31, no. 4.

Mikołajewicz J., Smolak M., *Zasada demokratycznego państwa prawnego w aksjologii Konstytucji Rzeczypospolitej Polskiej* [in:] *Zasada demokratycznego państwa prawnego w Konstytucji RP*, ed. S. Wronkowska, Warszawa 2006.

Mikuli P., *Doktryna konieczności jako uzasadnienie dla rozproszonej kontroli konstytucyjności ustaw w Polsce*, "Gdańskie Studia Prawnicze" 2018, vol. X.

Mojski W., *Kryzys konstytucyjny. Zagadnienia teorii konstytucji*, Lublin 2023.

Niemczyk M., *Idea niegodziwości prawa a konstytucyjny obowiązek jego przestrzegania*, "Przegląd Prawa Konstytucyjnego" 2022, no. 6.

Niżnik-Mucha A., *Tożsamość konstytucyjna a relatywizacja ochrony praw człowieka* [in:] *Interdyscyplinarny wymiar tożsamości konstytucyjnej*, eds. M. Florczak-Wątor, M. Krzemiński, Kraków 2022.

Niżnik-Mucha A., *Zakaz naruszania istoty konstytucyjnych wolności i praw w Konstytucji Rzeczypospolitej Polskiej*, Warszawa 2014.

Pach M., Małecki M., *Stan wyższej konieczności konstytucyjnej*, "Państwo i Prawo" 2018, no. 7.

Piechowiak M., *Komentarz do art. 82* [in:] *Konstytucja RP. Komentarz*, vol. I, eds. M. Safjan, L. Bosek, Warszawa 2016.

Piotrowski R., *Populizm i antypopulizm – perspektywa konstytucyjna* [in:] *Prawo w epoce populizmu*, ed. P. Grzebyk, Warszawa 2023.

Razmetaeva Y., *The right to resist and the right of rebellion*, "Jurisprudence" 2014, no. 3.

Rozmaryn S., *Konstytucja jako ustawa zasadnicza Polskiej Rzeczypospolitej Ludowej*, Warszawa 1967.

Rytel-Warzocha A., *Jak nie Trybunał Konstytucyjny to co? O rozproszonej kontroli konstytucyjności prawa w Polsce*, "Przegląd Prawa Konstytucyjnego" 2022, no. 3.

Sadurski W., *A pandemic of populists*, Cambridge University Press 2022.

Schmitt C., *Nauka o konstytucji*, Warszawa 2013.

Skowron R.T., *Konstytucyjne prawo do oporu w Europie. Opracowanie prawnoporównawcze*, „Przegląd Prawa Konstytucyjnego" 2023, no. 3.
Szczerski K., *Polska – republika wyznaniowa*, "Pressje" 2005, no. 5.
Sokolewicz W., Zubik M., *Uwagi do art. 2 Konstytucji* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, eds. L. Garlicki, M. Zubik, Warszawa 2016.
Sztompka P., *Socjologia*, Kraków 2010.
Sztompka P., *Zaufanie*, Kraków 2007.
Thoreau H.D., *O obywatelskim nieposłuszeństwie*, Kraków 2021.
Winczorek P., *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2000.
Zasady zmiany konstytucji w państwach europejskich, eds. S. Grabowska, R. Grabowski, Warszawa 2013.
Ziembiński Z., *Wstęp do aksjologii dla prawników*, Warszawa 1990.

Wojciech Mojski
ORCID: 0000-0002-4802-3346
Maria Curie-Skłodowska University in Lublin

Systemic Rationality in Citizen-State Relations

I

The relationship between the citizen (individual) and the state (public authority) is a constant subject of human reflection and scientific studies. This classic socio-political dependence determines the fundamental political "axis" that constructs a particular political community, which is the state, regardless of its specific form and characteristics and various conditions influencing its functioning at a given historical moment. At the same time, the multifaceted nature of the indicated systemic relationship determines its possible analysis considering various perspectives characteristic of the humanities and social sciences, as well as the continuing topicality of this issue[1].

Also, in the science of law, the relationship between the citizen and the state is the subject of many analyses and

[1] C.F. Voinea, M. Neumann, K.G. Troitzsch, *The State and the Citizen: Overview of a complex relationship from a paradigmatic perspective*, "Quality & Quantity" 2023, no. 57 (Suppl 1), pp. 1–17.

doctrinal studies[2], which certainly does not mean that this topic is exhausted. That is also not the purpose of this study. It is merely an attempt to look at the relationship between the citizen and the state from the point of view of the model, normative, and practical conditions of its assumed systemic rationality. As a consequence, the study consists of two main parts. In the first part, an attempt was made to characterise the doctrinal (theoretical) category of "systemic (constitutional) rationality" distinguished in this study, which should characterise the relations between the citizen and the state. In the second part, the theoretical findings are referred to historical and contemporary examples of "systemic (constitutional) irrationality" that are contrary to the model assumptions. The deliberations conducted here are based mainly on the findings of the theory of the constitution, and incidentally on the findings of the theory of rational choice and the theory of political decision-making.

II

As part of the preliminary doctrinal findings, it should be recalled that, according to the dictionary definition, "state" is a "politically organised community inhabiting a specific territory, having its own government and its own laws"[3].

---

[2] *Obywatel – państwo – społeczność międzynarodowa*, eds. D. Wacinkiewicz, E. Cała-Wacinkiewicz, K. Flaga-Gieruszyńska, Warszawa 2014.

[3] See the entry *State* [in:] *Wielki słownik języka polskiego*, ed. W. Doroszewski, https://sjp.pwn.pl/slowniki/pa%C5%84stwo.html (12.02.2024). By the way, it is worth noting that the word *state* in Polish comes from the noun *pan*, which etymologically distin-

Therefore, the essential elements of the state are the citizens (the "community"), as well as the authorities (the "government"). A necessary element of the state is also the legal system functioning in it, which defines the formal side of the relationship between citizens and public authorities. Within the framework of theoretical assumptions, each state should simultaneously perform specific functions, which

---

guishes this word from its equivalents in other European languages. The English word "state" as well as "stato" in Italian, "estado" in Spanish and Portuguese, "état" in French, and "staat" in German and Dutch) are derived from the Latin word status, meaning "state, circumstances", https://sjp.pwn.pl/poradnia/haslo/Dlaczego-panstwo-to-panstwo;20881.html (12.02.2024) and quoted here by D. Buttler, *Rozwój semantyczny wyrazów polskich*, Warszawa 1978, p. 109. See also the encyclopaedic definition of the state, according to which the "state" is an "ambiguous term referring to: 1) the organisational structure of society, which organises the activities of individuals and groups by means of the administrative apparatus based on norms established by it; 2) the organisation of a social group occupying a certain territory with sovereign power at its head, a political association in which the legitimate authority uses the «means of dominating the people» (M. Weber), or a «territorial corporation endowed with direct, spontaneous superior power» and legal personality (G. Jellinek). In both approaches, as in the one in which the «guarantee» character of the state is exposed, as 3) a structure established to protect the rights of individuals, the state is distinguished from society; other meanings have the definition of the state as 4) «actualisation of the ethical idea» (G.W.F. Hegel), or 5) the legal order, which is a normative structure, the organs of which are both governing institutions and citizens (H. Kelsen)". Entry *State* [in:] *Encyklopedia PWN*, https://encyklopedia.pwn.pl/haslo/panstwo;3953945.html (12.02.2024).

are not fully uniformly perceived in science, but the function of ensuring the security of citizens on various levels, as well as the regulatory function, which aims to establish specific rules for the functioning of citizens and state bodies, is quite commonly distinguished[4]. Nowadays, these basic principles define the norms of the Constitution, which regulates the foundations of the social, political, and economic system of the state and which, as a result, should also perform specific functions in these areas. In this sense, it is necessary to mention the legal (normative) function of the Constitution and the axiological function (consolidation of values important for society), the organisational function (determination of the foundations for the organisation of social and state life), and various social functions concerning the impact of constitutional norms on the citizens and society of a given state[5].

Next, it should be noted that the noun "rationality" in Polish is semantically related to the adjective "rational" derived from the Latin *ratio* (reason), which is defined as "1. based on modern, scientific methods, well planned and giving good results, 2. based on logical reasoning, 3. guided by reason,

---

[4] A. Korybski, *Funkcje państwa* [in:] *Wprowadzenie do nauki o państwie i polityce*, eds. B. Szmulik, M. Żmigrodzki, Lublin 2002, pp. 101–105; K. Sidorkiewicz, *Współczesne ujęcie funkcji państwa*, "Studia Elbląskie" 2010, no. XI, pp. 215–229; V. Serzhanova, *Functions of Contemporary States*, "Przegląd Prawa Konstytucyjnego" 2018, no. 6, pp. 302–303.

[5] W. Mojski, *Kryzys konstytucyjny. Zagadnienia teorii konstytucji*, Lublin 2023, pp. 7–8; S. Sagan, *Konstytucje współczesne*, Rzeszów 2018, pp. 92–97.

logic"[6]. Therefore, the analysed concept of "systemic rationality" in the linguistic sense can be justifiably understood as the assumed basing of the social, political, and economic system of the state on well-planned, well-thought-out, logical, and well-achieving assumptions[7]. At the same time, the assumption of systemic rationality in contemporary states, in which the Constitution is the fundamental systemic act, leads to the necessity to define in a rational manner the foundations for the functioning of citizens and state organs, as well as to the real and rational application of appropriate norms in the systemic practice of the state, which can be described as "constitutional rationality"[8].

---

[6] The entry *Rationality* [in:] *Wielki słownik języka polskiego*, ed. W. Doroszewski, https://sjp.pwn.pl/slowniki/racjonalno% C5%9B%C4%87.html#:~:text=racjonalno%C5%9B%C4%87%20Wielki%20s%C5%82ownik%20ortograficzny%20PWN%2A%20ra%E2%80%A2cjonal%E2%80%A2no%C5%9B%C4%87%20-%C5%9Bci%20S%C5%82ownik,na%20logicznym%20rozumowaniu-%C2%BB%203.%20%C2%Abkieruj%C4%85cy%20si%C4%99%20rozumem%2C%20logik%C4%85%C2%BB (12.02.2024).

[7] For more on various theoretical and legal aspects of rationality, see W. Sadurski, *"Rozumność" – między teorią prawa a filozofią polityczną* [in:] *Rozumność rozumowań prawniczych*, ed. M. Wyrzykowski, Warszawa 2008, pp. 9–38; *idem*, *Constitutional Public Reason*, Oxford 2022.

[8] It should be emphasised that, in the strict linguistic sense, "systemic rationality" is a broader concept in relation to the concept of "constitutional rationality". However, since the basic principles of the state system are commonly defined in the Constitution today, the use of these terms interchangeably is justified by the doctrinal assumptions of a constitutional state, i.e., a state functioning based on the norms of the Constitution.

It also follows from the doctrinal assumptions of constitutional theory that the Constitution, as a social contract between citizens and the state (public authority), should rationally determine the relations between these entities. The systemic (constitutional) rationality in the relations between the citizen and the state should, in principle, be applied to both sides of the relationship, although due to the model advantage of the state, related to the attribute of state authority, it is the state that in this context is the entity mainly obliged to act systemically rationally. In this sense, a systemically rational state is obliged to take well-thought-out, logical, and effective actions in all areas of the system. As a consequence, it is obliged to take equal care of the rights of all citizens (individuals), to take their opinions into account in decision-making processes, as well as to respect the rules of operation set out in the Constitution and to actually implement its assumed systemic functions in practice.

However, the functioning of the state and the proper fulfilment of specific tasks by its organs, as well as the fulfilment of the assumed functions (normative, axiological, organisational, and social) by the Constitution, are to a large extent determined by the legitimacy granted by the citizens. At the same time, the state itself, its authorities, and their actions, as well as the Constitution of the state, are permanent objects of civic legitimacy[9], and the real social and political significance of the state and its Constitution is determined by the systemic practice of respecting the established

[9] A. Młynarska-Sobaczewska, *Autorytet państwa. Legitymizacyjne znaczenie prawa w państwie transformacji ustrojowej*, Toruń 2010, p. 89.

norms of the system[10]. In this sense, the Constitution, as a formalised social contract, setting out the basic systemic rules relating to the relationship between the citizen and the state, does not always have to be such an instrument in the practice of a given state[11]. Therefore, the systemic (constitutional) rationality of the relationship between the citizen and the state can and should be considered in the context of model assumptions, but also in the context of the actual systemic practice of a given state. At the same time, the practical irrationality of the state may be the result of mistakes made at the stage of creating or amending the Constitution[12], but it may also be a state independent of the rationality of the Constitution itself, which meets the basic theoretical assumptions. On the other hand, the theoretical assumptions of the ideal systemic rationality can be illustrated by referring to hypothetical situations taking the form of games, i.e., to the "classic" for game theory and the theory of rational choice: the game of "deer and hare", as well as the dilemmas

---

[10] H.J. Powell, *A Community Built on Words: The Constitution in History and Politics*, Chicago–London 2002, pp. 211–213.

[11] For more on this subject, see P. Skuczyński, K. Muszyński, *Rozwój i kryzys konstytucji społecznej. Przypadek samorządów zawodowych*, Warszawa 2020, pp. 17–78; P. Skuczyński, *Społeczne odczytanie Konstytucji RP a aksjologia konstytucyjna i konstytucyjna ontologia społeczna*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2022, no. 1(30), pp. 100–112.

[12] D.E.W. Johnson, *Conflict Constitution-Making in Libya and Yemen*, "University of Pennsylvania Journal of International Law" 2017, vol. 39, no. 2, pp. 293–354; W. Mojski, *Durability of Constitutional Change: Functional Perspective*, "Przegląd Prawa Konstytucyjnego" 2022, vol. 66, no. 2, pp. 87–98.

of "prisoner" and "chicken". As pointed out in the literature on the theory of political decision-making, these games in the context of systemic relations can be used only based on the analogy and within the framework of necessary simplifications, but they nevertheless allow for a model depiction of the assumptions of theoretical rational decision-making. They also make it possible to relate these theoretical models to cases of emotional decision-making occurring in systemic practice[13].

Therefore, making the necessary simplifications for the purposes of the model analysis of the systemically rational relations between the citizen and the state, it should be noted first of all that this relationship boils down to actions between two theoretical actors, i.e., 1. the citizen (an individual, a minority of citizens) and 2. the state (the public authority, the majority of citizens). In such a subjective system, the game of "the deer and the hare" may take the form of cooperation between the state and the citizen, which will allow for the "hunting of the deer". However, it can also lead to the fact that the state (the majority of citizens) and the citizens (their minority) decide not to cooperate and to engage in confrontational actions, which, however, can only bring a reward of a lower value (the "hare"). Considering the multiplicity of this systemic game in the conditions of the functioning of the state (iterated game), the choice of confrontation instead of cooperation will always lead to worse results in the theoretical sense. Cooperation is therefore an optimal scenario.

---

[13] Z.J. Pietraś, *Decydowanie polityczne*, Kraków 2000, pp. 175––400.

In the case of the "prisoner" dilemma, in which the best theoretical rational result is "betrayal" and the worst is cooperation, the state and the citizen should not choose this scenario either. If both sides of the relationship choose "betrayal", they will gain less than if they gave up this option, even at the cost of some losses. The scenario of abandoning the "betrayal" is particularly relevant in the context of the multiple times of this game, which leads to an iterated prisoner's dilemma, in which there is a possibility of punishing the cheating party in the previous instalment of the game. As a result, it should be recognised that also in this case, only the lack of a confrontational attitude on the part of the two actors creates a theoretical optimal state of systemic equilibrium.

On the other hand, the "chicken" dilemma, in which theoretically the most can be gained by choosing a confrontational strategy and in which the "madman's strategy" is the most profitable (one must convince the other party of one's readiness for irrational behaviour), also cannot be legitimately related to the optimal scenario in the relations between the citizen and the state. The simultaneous irrationality of both actors will lead to a "collision", which is never a desirable state. Moreover, in the context of the iterated nature of this situation, even the rationality of one of the players in the first instalment and the concession of the irrational side does not have to take place in the next case, which makes the collision in the future more realistic. Therefore, the optimal solution is again to avoid a collision and choose a rational action on both sides from the beginning, i.e., to give in and avoid a "collision", as the situation with naturally the least harm to both parties.

These scenarios indicate that the relationship between the citizen and the state, understood as a "game" played out many times in various situational contexts, should always be reduced to the assumption of systemic rationality: 1. to cooperation, 2. to the lack of betrayal of the other party, even if it brings a short-term advantage and victory, and 3. to the avoidance of irrational behaviour, even if it constitutes a seemingly justified form of systemic action. Therefore, a systemically rational relationship between individuals and public authorities should be built on cooperation, mutual trust, and observance of the rules agreed upon by the parties. Lack of cooperation, betrayal, and irrational behaviour of citizens and the state leads to smaller benefits for both parties ("hare", not "deer"), greater punishment for both betraying parties, and to the possibility of a "clash" of irrational attitudes[14]. At the same time, it should be emphasised that it is completely wrong to assume that the systemic "game" is a single "game", because each systemic "game" in each of these cases is a multiple game in principle.

III

Respect for these theoretical principles of a systemically rational state does not in itself determine the well-being of citizens and the harmonious state development. This issue is certainly much more complex and has many other factors

[14] In this sense, systemic irrationality is an element that characterises constitutional crises of various scales. W. Mojski, *Kryzys konstytucyjny…*, pp. 69–72, 80–81, 89–95, 125–129.

influencing this condition. However, as practical historical and contemporary examples show, deviation from the theoretical elements of systemic rationality in the relations between the citizen and the state sooner or later results in negative consequences for both citizens and the state itself. Such effects are also noticeable when they are postponed, and the first "games" using non-cooperative methods bring positive effects to irrationally elected citizens or the authorities they support.

The most significant historical examples of a drastic deviation from the principles of systemic rationality concern two totalitarian regimes of the twentieth century, i.e., the functioning of Germany in the period of the Third Reich in 1933––1945 and Soviet Russia and the USSR in 1917–1991. In both cases, the authorities of the countries in question, contrary to the constitutional norms in force, adopted the lack of cooperation with citizens, their betrayal and actions aimed at "clashing" as a permanent pattern of action in various spheres of the political system. As a result of these irrational actions, in both cases there was a systemic state of the "double state"[15], in which the constitutional rational assumptions were extremely different from the systemic practice. This has subsequently translated into the complete fictitiousness of the Constitution in the area of the protection of individual rights, decision-making mechanisms, and the guarantee role of the law, and the internal irrationality of the system has led to a global armed conflict and massive violations of

[15] E. Fraenkel, J. Meierhenrich, *The Dual State: A Contribution to the Theory of Dictatorship*, Oxford 2017.

the subjective rights of citizens of other countries[16]. As a result, both the German and Soviet cases undermined the theoretical function of the state in ensuring the security of its citizens, as well as the complete fictitiousness of the Constitution and its functions. In this approach, the cited examples are model cases of complete systemic irrationality.

Much less serious in terms of scale, although analogously irrational in terms of model, is caused by the violation of the principles of a rational state in the systemic practice of some contemporary states, as exemplified by the current political situation in Poland and Hungary. In this context, the Polish political situation, which began in 2015, boils down to undermining the assumptions of a rational state in the context of the obligation to respect constitutional norms (constitutional irrationality). In this sense, the political authorities, supported by the majority of citizens until the parliamentary elections in October 2023, have chosen a confrontational (rather than cooperative) attitude towards minorities, violated the norms of the constitutional social contract, and attempted to force compliance with these actions by escalating irrational actions[17]. The Hungarian case

[16] F. Ryszka, *Państwo stanu wyjątkowego. Rzecz o systemie państwa i prawa Trzeciej Rzeszy*, Wrocław 1985; H. Arendt, *Korzenie totalitaryzmu*, Warszawa 2021; *Russia and Its Constitution: Promise and Political Reality*, eds. G.B. Smith, R. Sharlet, Leiden 2008; R. Sharlet, *Soviet Constitutional Crisis*, New York 2016.

[17] W. Sadurski, *Poland's Constitutional Breakdown*, New York 2018; *idem*, *Polski kryzys konstytucyjny*, Warszawa 2020; W. Mojski, *Kryzys konstytucyjny…*, pp. 159–172.

is characterised by analogous irrational actions taken by the authorities since 2011, although they have not been directly aimed at constitutional norms, but at the norms of international law binding on the state[18]. In the model sense, both cases of irrational actions have led to problems for both countries in the international arena, to the intensification of their economic problems, and to violations of subjective rights, democratic mechanisms, and the principles of the rule of law. Both cases are a manifestation of partial systemic irrationality, but also of fictitious constitutionalism, which did not take the full form typical of authoritarian regimes[19], but

[18] In 2011, Hungary formally amended its 'illiberal' Constitution but is incompatible with the country's international obligations, e.g., on the protection of certain human rights and the independence of the judiciary. P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary* [in:] *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania*, eds. A. von Bogdandy, P. Sonnevend, Oxford–Portland 2015, pp. 46–123; A. Jakab, E. Bodnár, *The Rule of Law, Democracy, and Human Rights in Hungary: Tendencies from 1989 until 2019* [in:] *Rule of Law, Common Values, and Illiberal Constitutionalism: Poland and Hungary within European Union*, eds. T. Drinóczi, A. Bień-Kacała, London––New York 2021, pp. 105–118.

[19] *Constitutions in Authoritarian Regimes*, eds. T. Ginsburg, A. Simpser, New York 2013; Y. Wang, *Tying the Autocrat's Hands: The Rise of the Rule of Law in China*, New York 2015; M. Tushnet, *Authoritarian Constitutionalism*, "Cornell Law Review" 2015, vol. 100, pp. 391–462; *Authoritarian Constitutionalism: Comparative Analysis and Critique*, eds. H.A. García, G. Frankenberg, Cheltenham 2019.

the form of "abusive constitutionalism" contrary to the theoretical assumptions of systemic rationality[20].

IV

The model systemic logic of a rational constitutional state assumes the necessary respect for the rules set out in the norms of the Constitution. Violating these rules in a way that is contrary to the rationality of the system – as indicated by theoretical assumptions as well as historical and current examples from the practice of the system – always leads to negative general and individual consequences. As a result of irrational confrontational actions, especially by public authorities, the protection of values important for individual citizens and for the entire state is being eroded. However, the main problem is the willingness of citizens and those in power to see these dependencies. In view of the emotionality of human behaviour, which often characterises systemic practice, this is a factor that determines the departure of some countries from systemic rationality towards various forms of irrationality. This was pointed out by the American economist B. Caplan, who in his book *The Myth of the Rational Voter*, considering issues concerning the functioning of the democratic system from the economic perspective, pointed out

[20] D.E. Landau, *Abusive Constitutionalism*, "Davis Law Review" 2013, vol. 47, pp. 189–260; G. Skąpska, *Znieważający konstytucjonalizm i konstytucjonalizm znieważony. Refleksja socjologiczna na temat kryzysu liberalno-demokratycznego konstytucjonalizmu w Europie pokomunistycznej*, "Filozofia Publiczna i Edukacja Demokratyczna" 2018, vol. 7, no. 1, pp. 276–301.

that only seemingly "democracy works because it does what the voters want", and its main threat is the authorities that do not consider the will of the voters. In his opinion, it is exactly the opposite. "Democracy fails precisely because it does what the voters want", and the greatest threat to the democratic system comes from irrational voters, because "socially harmful political programs win at the behest of the people". At the same time, the quoted author notes that citizens who vote irrationally rarely immediately and directly feel the effects of their irrational choices, which situates their choice within a kind of subjective rationality ("rational irrationality"). However, these effects are objectively felt in the long run, or at least indirectly, by other citizens and irrational voters themselves[21].

To a large extent, the mentioned theses coincide with the conclusions regarding the system's rationality. Bryan Caplan points out that, at least often, as people, citizens, voters, we are not rational in our actions and decisions, neither in the individual nor in the social dimension. We are often guided by emotions and not by reason, which also applies to representatives of the authorities, who often even refer to emotions and not to rational arguments to achieve particular political benefits. Thus, the systemic rationality of the citizen-state relationship, assumed in the model, sometimes remains only an unfulfilled theoretical postulate that does not translate into practice. However, as examples from

[21] B. Caplan, *The Myth of the Rational Voter: Why Democracies Choose Bad Policies*, Princeton 2007. Polish edition: *Mit racjonalnego wyborcy*, Wrocław 2022.

various countries illustrate, what is important is not so much the complete lack of disconnect between theory and practice, but its scale. It is impossible to fully eliminate actions that are irrational in the context of the system, in the face of natural human emotionality. However, if the scale of this irrationality is not significant, it does not lead to a serious threat to subjective rights and to a significant degeneration of the mechanisms of power, and consequently to the undermining or collapse of the model of the rational state system. However, if the scale of the discrepancy between theoretical assumptions and political practice is significant, the consequences for citizens and the state are very negative.

However, the irrationality of human behaviour should not be perceived as a factor disavowing the model assumptions of the state of systemic rationality. This model is optimal in terms of its theoretical assessment from the perspective of the citizen and his rights, and from the perspective of the efficiency of the functioning of the state and its organs. In this sense, the model of a rational constitutional state is "finite", and any irregularities in the area of political practice are not the result of its erroneous assumptions, but result from the imperfection of the "human factor". Therefore, it is necessary to take measures to improve the state of political knowledge of citizens[22], but also to be aware of the inter-

[22] *Edukacja i konstytucjonalizm*, ed. K. Motyka, Lublin 2000; T. Ginsburg, A.Z. Huq, *How to Save a Constitutional Democracy*, Chicago–London 2018, pp. 237–245; L.C. McClain, J.E. Fleming, *Civic Education in Circumstances of Constitutional Rot and Strong Polarization*, "Boston University Law Review" 2021, vol. 101(1771), pp. 1771–1792.

weaving of more or less irrational and rational episodes and cycles in the practice of even the most systemically rational states and societies[23].

Literature

Aguiar-Conraria L., Magalhães P.C., Soares M.J., *Cycles in Politics: Wavelet Analysis of Political Time Series*, "American Journal of Political Science" 2012, vol. 56, no. 2.

Arendt H., *Korzenie totalitaryzmu*, transl. D. Grinberg, M. Szawiel, Warszawa 2021.

Authoritarian Constitutionalism: Comparative Analysis and Critique, eds. H.A. García, G. Frankenberg, Cheltenham 2019.

Balkin J.M., *The Cycles of Constitutional Time*, Oxford 2020.

Buttler D., *Rozwój semantyczny wyrazów polskich*, Warszawa 1978.

Caplan B., *Mit racjonalnego wyborcy*, Wrocław 2022.

Caplan B., *The Myth of the Rational Voter: Why Democracies Choose Bad Policies*, Princeton 2007.

Constitutions in Authoritarian Regimes, eds. T. Ginsburg, A. Simpser, New York 2013.

Edukacja i konstytucjonalizm, ed. K. Motyka, Lublin 2000.

Fraenkel E., Meierhenrich J., *The Dual State: A Contribution to the Theory of Dictatorship*, Oxford 2017.

Ginsburg T., Huq A.Z., *How to Save a Constitutional Democracy*, Chicago–London 2018.

[23] For more on constitutional cycles, see S.P. Huntington, *American Politics: The Promise of Disharmony*, Cambridge 1981; L. Aguiar-Conraria, P.C. Magalhães, M.J. Soares, *Cycles in Politics: Wavelet Analysis of Political Time Series*, "American Journal of Political Science" 2012, vol. 56, no. 2, pp. 500–518; J.M. Balkin, *The Cycles of Constitutional Time*, Oxford 2020.

Huntington S.P., *American Politics: The Promise of Disharmony*, Cambridge 1981.

Jakab A., Bodnár E., *The Rule of Law, Democracy, and Human Rights in Hungary: Tendencies from 1989 until 2019* [in:] *Rule of Law, Common Values, and Illiberal Constitutionalism: Poland and Hungary within European Union*, eds. T. Drinóczi, A. Bień-Kacała, London–New York 2021.

Johnson D.E.W., *Conflict Constitution-Making in Libya and Yemen*, "University of Pennsylvania Journal of International Law" 2017, vol. 39, no. 2.

Korybski A., *Funkcje państwa* [in:] *Wprowadzenie do nauki o państwie i polityce*, eds. B. Szmulik, M. Żmigrodzki, Lublin 2002.

Landau D.E., *Abusive Constitutionalism*, "Davis Law Review" 2013, vol. 47.

McClain L.C., Fleming J.E., *Civic Education in Circumstances of Constitutional Rot and Strong Polarization*, "Boston University Law Review" 2021, vol. 101(1771).

Młynarska-Sobaczewska A., *Autorytet państwa. Legitymizacyjne znaczenie prawa w państwie transformacji ustrojowej*, Toruń 2010.

Mojski W., *Durability of Constitutional Change: Functional Perspective*, „Przegląd Prawa Konstytucyjnego" 2022, vol. 66, no. 2.

Mojski W., *Kryzys konstytucyjny. Zagadnienia teorii konstytucji*, Lublin 2023.

Obywatel – państwo – społeczność międzynarodowa, eds. D. Wacinkiewicz, E. Cała-Wacinkiewicz, K. Flaga-Gieruszyńska, Warszawa 2014.

Pietraś Z.J., *Decydowanie polityczne*, Kraków 2000.

Powell H.J., *A Community Built on Words: The Constitution in History and Politics*, Chicago–London 2002.

Russia and Its Constitution: Promise and Political Reality, eds. G.B. Smith, R. Sharlet, Leiden 2008.

Ryszka F., *Państwo stanu wyjątkowego. Rzecz o systemie państwa i prawa Trzeciej Rzeszy*, Wrocław 1985.
Sadurski W., *Constitutional Public Reason*, Oxford 2022.
Sadurski W., *Poland's Constitutional Breakdown*, New York 2018.
Sadurski W., *Polski kryzys konstytucyjny*, Warszawa 2020.
Sadurski W., *"Rozumność" – między teorią prawa a filozofią polityczną* [in:] *Rozumność rozumowań prawniczych*, ed. M. Wyrzykowski, Warszawa 2008.
Sagan S., *Konstytucje współczesne*, Rzeszów 2018.
Serzhanova V., *Functions of Contemporary States*, "Przegląd Prawa Konstytucyjnego" 2018, no. 6.
Sharlet R., *Soviet Constitutional Crisis*, New York 2016.
Sidorkiewicz K., *Współczesne ujęcie funkcji państwa*, "Studia Elbląskie" 2010, no. XI.
Skąpska G., *Znieważający konstytucjonalizm i konstytucjonalizm znieważony. Refleksja socjologiczna na temat kryzysu liberalno-demokratycznego konstytucjonalizmu w Europie pokomunistycznej*, "Filozofia Publiczna i Edukacja Demokratyczna" 2018, vol. 7, no. 1.
Skuczyński P., *Społeczne odczytanie Konstytucji RP a aksjologia konstytucyjna i konstytucyjna ontologia społeczna*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2022, no. 1(30).
Skuczyński P., Muszyński K., *Rozwój i kryzys konstytucji społecznej. Przypadek samorządów zawodowych*, Warszawa 2020.
Sonnevend P., Jakab A., Csink L., *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary* [in:] *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania*, eds. A. von Bogdandy, P. Sonnevend, Oxford–Portland 2015.
Tushnet M., *Authoritarian Constitutionalism*, "Cornell Law Review" 2015, vol. 100.
Voinea C.F., Neumann M., Troitzsch K.G., *The State and the Citizen: Overview of a complex relationship from a paradigmatic*

perspective, "Quality & Quantity" 2023, no. 57 (Suppl 1), pp. 1–17.
Wang Y., *Tying the Autocrat's Hands: The Rise of the Rule of Law in China*, New York 2015.

Tomasz Ciechanowski
ORCID: 0000-0002-3627-9803
University of Rzeszów

Nationwide Referendum on Issues of Particular Importance to the State – Selected Issues

Introduction

One of the forms of direct democracy is the institution of the referendum. A referendum is a way for citizens to directly decide by voting on important matters of state life in the territory of the whole country or part of it. Its characteristic features include:

- direct participation of citizens in the making their voices heard;
- having only one vote;
- to regard the will of the majority of all eligible citizens as decisive in the adoption of constitutions and laws, and in the determination of matters[1].

[1] E. Zieliński, *Problemy teoretyczne i klasyfikacyjne referendum* [in:] *Referenda w państwach Europy*, eds. E. Zieliński, I. Bokszczanin, J. Zieliński, Warszawa 2003, p. 13; A. Rost, *Prawne formy udziału obywateli w rządzeniu państwem*, Poznań 1993, p. 29; E. Kużelewska, *Referendum w procesie integracji europejskiej*, Warszawa 2006,

The Polish structure of the referendum is indisputably one of the forms of direct democracy, manifested by the exercise of power by the sovereign. It consists in the expression of all authorised persons in an important matter by casting a vote. Voting takes place based on the relevant standards of modern electoral law such as universality, equality, directness, and secrecy. A referendum gives a positive or negative answer to the questions posed, or a choice is made between the proposed options[2].

It consists in holding a popular vote, which takes place at a certain time during one or two days, in the territory of a country or part of it. It gives citizens who have the right to vote the opportunity to express their will on the outcome of a particular case. In order to distinguish the persons entitled to participate in the referendum, the constitutional legislation introduces conditions which include, e.g., being a citizen of the country in which the referendum is held and reaching the age of majority[3].

The institution of a referendum in Polish legislation as a form of direct democracy is currently a matter of constitutional law. The very idea of the referendum comes from

---

p. 13; S. Grabowska, *Formy demokracji bezpośredniej w wybranych państwach europejskich*, Rzeszów 2009.

[2] P. Radziewicz, *Art. 125 Referendum ogólnokrajowe* [in]: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, WKP 2023; S. Grabowska, *Referendum ogólnokrajowe w Polsce – analiza przypadku*, „Studia Politologiczne" 2019, no. 53, pp. 97–98; A. Kulig, *Formy demokracji bezpośredniej* [in:] *Prawo konstytucyjne RP*, ed. P. Sarnecki, Warszawa 1999, p. 159.

[3] B. Banaszak, *Prawo wyborcze obywateli*, Warszawa 1996, pp. 14––15.

the times of ancient states – cities and republics, in which it was argued that every citizen has the right to personal participation in making various types of public decisions[4]. At that time, all citizens gathered at the same time and place to settle the most important issues concerning the entire community. The *comitas* in Rome and the popular assemblies in Greece, known as *ecclesias*[5], can be accepted as the first relatively institutionalised forms of direct participation of the community in the exercise of public authority[6].

Over the following centuries, the participation of communities in the exercise of power became increasingly incidental. The models for the current structure of the referendum derive from the Swiss practice of assemblies of the inhabitants of communes, which initially boiled down to meetings and finally took the form of voting, where eligible citizens decide a specific matter through voting. The first expression of will by citizens throughout the country took place in France in the eighteenth century and concerned the expression of will by those entitled to adopt a constitution.

---

[4] M. Jabłoński, *Referendum ogólnokrajowe: wybrane zagadnienia*, „Palestra" 2003, vol. 48, no. 5–6, p. 9; M. Jabłoński, *Prawo do udziału w referendum* [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 365.

[5] E. Klein, *Powszechna historia państwa i prawa*, vol. I, Wrocław 1996, pp. 11–14.

[6] E. Zieliński, *Referendum w świecie współczesnym*, Wrocław–Warszawa–Kraków 1968, pp. 7–8; *idem*, *Referendum w państwie demokratycznym* [in:] *Referendum w Polsce współczesnej*, eds. M. Staszewski, D. Waniek, Warszawa 2005, pp. 9–28.

Poland's path to direct democracy was originally a statutory plebiscite. Subsequently, there were laws regulating the institutions of the referendum and, what is particularly noteworthy, that at that time the legislator already distinguished between a national referendum and a local referendum[7]. Subsequently, the regulations concerning the referendum appeared in the Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive powers of the Republic of Poland and on local self-government, and finally became part of the provisions of the Constitution of the Republic of Poland of 2 April 1997 with reference to the Act in terms of detailed provisions[8].

The current Constitution provides grounds for holding a referendum both on the territory of the whole country (Articles 90, 125, and 235 of the Constitution) and on part of it (Article 170 of the Constitution). The detailed procedure for conducting a local referendum is laid down in the Local Referendum Act of 15 September 2000[9]. This referendum will not be the subject of further analysis in this paper.

As far as the nationwide referendum is concerned, the Constitution provides for three cases, i.e., a referendum on matters particularly important to the state (Article 125 of the Constitution), a referendum on consent to the ratifica-

---

[7] Act of 6 May 1987 on Public Consultations and Referendum, Journal of Laws of 1987 No. 14, item 83.

[8] Act of 14 March 2003 on the National Referendum, Journal of Laws of 2020, item 851, as amended.

[9] Local Referendum Act of 15 September 2000, Journal of Laws of 2016, item 400, as amended.

tion of an international agreement based on which the competences of state authorities in some matters are to be transferred to an international organisation or body (Article 90(3) of the Constitution), and a referendum approving an amendment to the Constitution of the Republic of Poland, if the amendment concerns the provisions of Chapter I, II, or XII of the Constitution (Article 235(6) of the Constitution). The Constitution also contains restrictions on the holding of a nationwide referendum, which cannot be held during the state of emergency and within 90 days after its end (Article 228(7) of the Constitution). It was also decided that the validity of the referendum was determined by the Supreme Court[10].

The rules and procedures for conducting a nationwide referendum are laid down in the Act of 14 March 2003 on the National Referendum[11].

A nationwide referendum under the current Polish law is optional. It is ordered when the conditions specified by law are met and a competent authority decides to do so. It is worth emphasising that the constitutional provisions do not provide for the case of a mandatory referendum.

This paper focuses mainly on the issue of a national referendum on matters particularly important to the state.

---

[10] H. Groszyk, M. Granat, *Modele referendum w polskim prawie (próba optymalizacji)* [in:] *Prawo a wartości. Księga jubileuszowa profesora Józefa Nowackiego*, eds. J. Bogucka, Z. Tober, Kraków 2003, p. 89.

[11] Act of 14 March 2003 on the National Referendum, Journal of Laws of 2020, item 851, as amended.

Entities Entitled to Order a Referendum on Matters Particularly Important to the State

Only two entities have the right to order a nationwide referendum, including in matters particularly important to the state: the Sejm (on its own), by adopting an appropriate resolution by an absolute majority of votes in the presence of at least half of the statutory number of deputies (Article 120 of the Constitution), and by the President with the consent of the Senate expressed in a resolution adopted by an absolute majority of votes in the presence of at least half of the statutory number of senators (Article 120 and Article 124 of the Constitution). The President's power is free from the countersignature of the Prime Minister (Article 144(3)(5) of the Constitution), but it can only be exercised in cooperation with the Senate, which in this case co-decides to order a referendum. If the Senate does not agree, the President's initiative to hold a referendum is not taken into account.

The initiative to put the matter to a referendum may come from the Sejm, the Senate, the Council of Ministers, or citizens. At the same time, on the initiative of citizens, matters in the field of expenditure and revenue, particularly taxes and other public levies, state defence, amnesty, were excluded. The institution of the initiative is complemented by information provided by the Marshal of the Sejm to the applicant in case when the application is rejected by the Sejm. The structure of the referendum order and the right of its initiative presented in this way indicates certain dysfunctions. Since a referendum is an institution of direct democracy, the presented structure may result in the fact that, for example, the citizens' initiative to hold a referendum may be

terminated at the stage of adopting an appropriate resolution by the Sejm.

Material Scope of the Referendum on Matters of Particular Importance to the State

A referendum on matters particularly important to the state appeared for the first time in the Polish legislation in the Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive powers of the Republic of Poland and on local self-government[12], where Article 19 established the institution of a referendum on matters particularly important to the state. The current Constitution of the Republic of Poland[13] has developed the existing regulations in the field of referendums particularly important to the state, indicating that it is a category of a nationwide referendum, the validity of which is confirmed by the Supreme Court.

Referendums on matters particularly important to the state have been held four times so far, including two under the current constitution:

(1) On February 18, 1996, two votes were held:

a) The President of the Republic of Poland ordered a referendum on the general enfranchisement of citizens on that day.

---

[12] Constitutional Act of 17 October 1992 on Mutual Relations between the Legislative and Executive Powers of the Republic of Poland and on Local Self-Government, Journal of Laws of 1992 No. 84, item 426, as amended.

[13] The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483, as amended.

The referendum question was:
Are you in favour of carrying out a general enfranchisement of citizens?

b) The Sejm of the Republic of Poland – ordered a referendum on certain directions of use of privatised state property.

The referendum questions were:

1. Are you in favour of the liabilities towards pensioners and public sector employees, resulting from the rulings of the Constitutional Tribunal, to be satisfied from privatised state assets?
2. Are you in favour of a part of the privatised state assets going to universal pension funds?
3. Are you in favour of increasing the value of share certificates of National Investment Funds by extending this scheme to other enterprises?
4. Are you in favour of including privatisation vouchers in the enfranchisement programme?

(2) On September 6, 2015, based on the decision of the President of the Republic of Poland, a referendum was held on the electoral system to the Sejm of the Republic of Poland, the financing of political parties and the introduction into the legal system of the principle most often referred to as *in dubio pro tributario.*

The referendum questions were:

1. Are you in favour of introducing single-member constituencies in elections to the Sejm of the Republic of Poland?

2. Are you in favour of maintaining the current method of financing political parties from the state budget?
3. Are you in favour of introducing a general rule for resolving doubts as to the interpretation of tax law in favour of the taxpayer?

(3) The Sejm of the Republic of Poland – ordered a referendum on the sale of state assets to foreign entities, raising the retirement age, the barrier on the border between the Republic of Poland and the Republic of Belarus and accepting immigrants from the Middle East and Africa on October 15, 2023.

Content of the question:

1. Do you support the sale of state assets to foreign entities, leading to the loss of control of Poles over strategic sectors of the economy?
2. Do you support raising the retirement age, including reinstating the increased retirement age to 67 for men and women?
3. Do you support the removal of the barrier on the border between the Republic of Poland and the Republic of Belarus?
4. Do you support the admission of thousands of illegal immigrants from the Middle East and Africa, in accordance with the forced relocation mechanism imposed by the European bureaucracy?

At this point, the question should be asked: how to interpret matters of particular importance to the state?

Neither the Constitution nor the Referendum Act, using the phrase of a matter of particular importance for the state, specify this concept. It is indisputable that such a referendum

cannot be held on every issue that needs to be resolved, but only on those that are particularly important to the state[14].

To clarify the phrase in question, one can refer to the spelling rules adopted by the Constitutional Committee of the National Assembly, which indicated that the "state" written with a lower-case letter should be understood as "organisation", thus, as a rule, the state used in the phrase referendum is understood as a "set of institutions and people joining on its behalf"[15], and the subject of the referendum is only a matter that is of particular importance to these institutions and entities.

As a rule, the Constitutional Tribunal did not take a position on the matter of particular importance for the state, and in its ruling of 26 February 2003 (ref. no. K 30/02), the Tribunal stated *expressis verbis* that Article 125 of the Constitution, as opposed to Article 170 of the Constitution, formulates a "narrowing of the subject matter of a referendum", which only confirms the argumentation that not every issue may be the subject of a nationwide referendum.

The presented institution of a nationwide referendum in matters of particular importance for the state, which does not contain precise rules for the scope of the referendum and

---

[14] M. Jabłoński, *Referendum ogólnokrajowe w polskim prawie konstytucyjnym*, Wrocław 2001, pp. 69–74; A. Kulig, B. Naleziński, *Referendum w systemie ustrojowym Polski*, "Przegląd Sejmowy" 1996, no. 5, p. 25; P. Sarnecki, *Ustawa z dnia 14 marca 2003 o referendum ogólnokrajowym na tle Konstytucji Rzeczypospolitej Polskiej*, "Przegląd Sejmowy" 2005, no. 3.

[15] Statement by P. Winczorek [in:] "Biuletyn" 1997, no. XXXVII, p. 44; M. Masternak-Kubiak, A. Ławniczak, *Republikańska forma państwa w ujęciu Konstytucji RP*, „Państwo i Prawo" 1999, no. 8, p. 45.

does not indicate state authorities or institutions that may influence the content of referendum questions, highlighted the problem of the constitutionality of referendum questions.

Thus, on the example of the national referendum of 2015, it should be pointed out that out of five opinions, only two unconditionally declared the constitutionality of all referendum questions[16], the rest pointed to serious legal defects in the questions presented. At this point, it should be recalled that one of the questions concerned the introduction of single-member constituencies to the Sejm, which would require an amendment to the Constitution.

It means that this universal vote could have been an attempt to create a right on the part of the sovereign to initiate amendments to the Constitution, which is not provided in the Constitution of the Republic of Poland. It was argued that ordering a referendum, the outcome of which is contrary to constitutional norms, is inadmissible[17].

Another proposed question on the financing of political parties from the budget has been criticised for the lack of precision of the question[18].

---

[16] Legal opinions to the Senate paper no. 899 of the Senate of the Republic of Poland of the 8th term, i.e., the opinion of Prof. Wojciech Orłowski (Opinion no. 5) and Prof. Marek Chmaj (Opinion no. 2).

[17] M.M. Wiszowaty, *Opinia prawna dotycząca oceny zgodności z Konstytucją materii pytań zawartych w projekcie postanowienia Prezydenta RP o zarządzeniu ogólnokrajowego referendum*, Senate paper no. 899 of the Senate of the 8th term, p. 10.

[18] *Ibidem*, p. 13.

The last referendum question concerning the principle of in *dubio pro tributario* was also criticised because, in the opinion of Marcin Michał Wiszowaty, it did not fall into the catalogue of "special significance for the state", i.e., it did not meet the *sine qua non* requirement provided in Article 125 of the Constitution of the Republic of Poland. The opinion's author pointed out that this rule was binding in the tax law[19].

On the other hand, as part of the 2023 national referendum, the Council of Ministers, in the justification of the motion to hold a nationwide referendum on matters of particular importance to the state, indicated the broad discretion of the Sejm of the Republic of Poland in making decisions on the final classification of a given matter (problem) to the category of "special importance", accepted in the doctrine. It was emphasised that the significant degree of interpretative freedom of the Sejm is also affected by the lack of an institution that would be directly appointed to review the admissibility of submitting a specific matter to a referendum referred to in Article 125 of the Constitution of the Republic of Poland, in particular that the Constitutional Tribunal is incompetent to review the constitutionality of a resolution of the Sejm of the Republic of Poland[20].

---

[19] *Ibidem*, p. 21.

[20] Motion of the Council of Ministers to hold a nationwide referendum on matters of particular importance to the state, Sejm paper No. 3586, Warsaw, August 15, 2023.

Conclusion

Assessing the institution of a nationwide referendum in matters of particular importance to the state, I find that the original idea of a referendum, where gathered people jointly decided on matters important to them, has become very deformed. Of course, in today's political systems, as a rule, we have an indirect way of exercising power by citizens, but the institutions of direct democracy still exist within the framework of systemic institutions. Although, as I have shown, the idea of a referendum boils down to the fact that it is the citizens themselves who can decide on the matter they deem appropriate, the current Polish legal regulations have left the citizens only with the referendum initiative with the mentioned restrictions. Moreover, if the Sejm does not take up this civic initiative, citizens are not entitled to any legal remedies in this regard. The evolution of the referendum institution should be associated with appropriate legal changes so that the referendum initiative is not lost, but obliges the Sejm to adopt a resolution on holding a referendum. In my opinion, the changes in the scope of the Sejm's obligation to hold a nationwide referendum should go hand in hand with changes in the scope of specifying the subject of the referendum, including matters of particular importance for the state. The mentioned negative opinions on the constitutionality of referendum questions or the treatment of Article 125 of the Constitution as unlimited by the authorised bodies is inadmissible. The quoted opinion as part of the 2023 referendum showed that the competent state authorities are aware there is no control over the scope of a matter of particular importance to the state, but it is important to recall at

this point a significant principle of our system, namely that public authorities act based on the law and, above all, within its limits. Thus, there should be a procedural regulation for the referendum applicant to verify the scope of the referendum and to check whether the submitted referendum application and potential questions fall within the scope of matters of particular importance to the state.

Literature

Banaszak B., *Prawo wyborcze obywateli*, Warszawa 1996.

Grabowska S., *Formy demokracji bezpośredniej w wybranych państwach europejskich*, Rzeszów 2009.

Grabowska S., *Referendum ogólnokrajowe w Polsce – analiza przypadku*, "Studia Politologiczne" 2019, no. 53.

Groszyk H., Granat M., *Modele referendum w polskim prawie (próba optymalizacji)* [in:] *Prawo a wartości. Księga jubileuszowa profesora Józefa Nowackiego*, eds. J. Bogucka, Z. Tober, Kraków 2003.

Jabłoński M., *Prawo do udziału w referendum* [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014.

Jabłoński M., *Referendum ogólnokrajowe w polskim prawie konstytucyjnym*, Wrocław 2001.

Jabłoński M., *Referendum ogólnokrajowe: wybrane zagadnienia*, "Palestra" 2003, vol. 48, no. 5–6.

Klein E., *Powszechna historia państwa i prawa*, Part I, Wrocław 1996.

Kulig A., Naleziński B., *Referendum w systemie ustrojowym Polski*, "Przegląd Sejmowy" 1996, no. 5.

Kulig A., *Formy demokracji bezpośredniej* [in:] *Prawo konstytucyjne RP*, ed. P. Sarnecki, Warszawa 1999.

Kużelewska E., *Referendum w procesie integracji europejskiej*, Warszawa 2006.

Legal opinions to the Senate paper no. 899 of the Senate of the Republic of Poland of the 8th term, i.e., the opinion of Prof. Wojciech Orłowski (Opinion no. 5) and Prof. Marek Chmaj (Opinion no. 2).

Masternak-Kubiak M., Ławniczak A., *Republikańska forma państwa w ujęciu Konstytucji RP*, "Państwo i Prawo" 1999, no. 8.

Radziewicz P., *Art. 125 Referendum ogólnokrajowe* [in]: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, WKP 2023.

Rost A., *Prawne formy udziału obywateli w rządzeniu państwem*, Poznań 1993.

Sarnecki P., *Ustawa z dnia 14 marca 2003 o referendum ogólnokrajowym na tle Konstytucji Rzeczypospolitej Polskiej*, "Przegląd Sejmowy" 2005, no. 3.

Winczorek P. [in:] "Biuletyn" 1997, no. XXXVII.

Wiszowaty M.M., *Opinia prawna dotycząca oceny zgodności z Konstytucją materii pytań zawartych w projekcie postanowienia Prezydenta RP o zarządzeniu ogólnokrajowego referendum*, Senate paper no. 899 of the Senate of the 8th term.

Zieliński E., *Problemy teoretyczne i klasyfikacyjne referendum* [in:] *Referenda w państwach Europy*, eds. E. Zieliński, I. Bokszczanin, J. Zieliński, Warszawa 2003.

Zieliński E., *Referendum w państwie demokratycznym* [in:] *Referendum w Polsce współczesnej*, eds. M. Staszewski, D. Waniek, Warszawa 2005.

Zieliński E., *Referendum w świecie współczesnym*, Wrocław–Warszawa–Kraków 1968.

Piotr Czarny
ORCID: 0000-0002-6558-1075
Jagiellonian University in Kraków

Selected Problems of Teaching Constitutional Law in the Course of Law Studies (Remarks on the Background of Civic Constitutional Education)

I

Napoleon Bonaparte had already claimed that the most important basis of the constitutional system was education. Elaborating on this idea, he added that "only those who want to deceive the people by ruling for their own benefit can want to keep them in ignorance, because the better and universal the enlightenment, the more people are convinced of the necessity of laws, of the need to defend them, and the more stable, happy, and prosperous society is"[1]. It seems that despite the passage of time, these statements have remained valid. Moreover, the current systems of public education, and above all the modern mass media, have in a paradoxical way given those who want to keep citizens in a state of ignorance and "mental poverty" ways of influencing things that were

[1] Napoleon, *Maksymy*, Warszawa 1983, pp. 303–304.

undreamed of even at the end of the eighteenth century and the beginning of the nineteenth century. It is also worth noting that Napoleon considers legal awareness to be a fundamental element of "civil enlightenment", namely knowledge of the law and the conviction that it is necessary to strive to comply with it.

There is no need to justify the thesis that the legal awareness of a particular person is primarily a derivative of: the personal experiences of that person and those closest to her and information obtained through the mass media and purposeful educational processes. In Poland, the issue of legal education has even been regulated by law. This concept even has a kind of legal definition, as it includes "educational activities aimed at increasing the legal awareness of the society, concerning, in particular, the dissemination of knowledge about: civil rights and duties; activities of national and international law enforcement authorities; mediation and amicable dispute resolution; opportunities for citizens to participate in public consultations and the law-making process; access to free legal aid and free citizen counselling"[2]. In general, the legislator indicated that the tasks of public authorities in the field of legal education may be carried out in forms which in particular consist in the development of handbooks and guides, conducting open lectures and workshops, and disseminating information through the mass

[2] Article 3b(1) and (2) of the Act of 5 August 2015 on Free Legal Aid, Free Citizen Counselling and Legal Education (Journal of Laws of 2021, item 945) added by Article 1(5) of the Act of 15 June 2018 amending the Act on Free Legal Aid and Legal Education and Certain Other Acts of 15 June 2018 (Journal of Laws 2018, item 1467).

media and other customary forms of communication, including conducting social campaigns.

Among the elements of legal education explicitly indicated in the Act, there is no separately mentioned knowledge about the Constitution of the Republic of Poland. Of course, since the legislator has only enumerated the issues that it considered the most important, it does not mean that the knowledge of the nature, content, and practice of the application of the Constitution goes beyond the limits of legal education. However, from a formal perspective, it is not at the heart of it.

In the public debate, one can encounter the concept of constitutional education, most often combined with demands for greater activity in this area. Since the concept of education itself is not unambiguous, it should be noted that it includes not only teaching itself (transfer of knowledge, information) or learning. Educating is also the shaping of skills, attitudes, and views, the transmission of ethical and aesthetic values[3]. As a result, the relationship between the transfer of knowledge about the Constitution and civic education cannot be overlooked at this point. The latter, in turn, is based on the assumption that the basic task of "education is to instruct to perform civic functions and to familiarise oneself with the duties and rights set out in state legislation"[4]. In other words, the aim of this type of education

[3] *Edukacja – definicja pedagogiczna, psychologiczna i naukowa*, https://publikacje.edu.pl/edukacja-definicja-pedagogiczna-psychologiczna-naukowa (30.01.2024).

[4] https://encyklopedia.pwn.pl/haslo/edukacja-obywatelska;3896550.html (30.01.2024).

is to form an informed citizen, that is, a person who knows her rights and freedoms, and is able to use and defend them, a person who "actively participates in social and political life, who is not indifferent to who governs it and how they do it"[5]. It is obvious that a conscious citizen must know the basics of the system of "his" state, the mechanism of exercising public authority, and, if necessary, act in an appropriate way for the restoration of the proper, i.e., consistent with the Constitution, operation of state, and local authorities.

The situation of the constitutional crisis started in 2015 becomes increasingly complicated. It also raises problems in the field of legal education. The following remarks mainly concern the problem of whether and how the postulates of civic constitutional education should be considered in the course of legal studies, and more specifically in the course of teaching constitutional law.

II

University higher legal studies can hardly be considered a form of legal education. The number of students means that the impact of this form of teaching on the legal awareness of the society (as a whole) is very small. Admittedly, attention is drawn to the mass nature of legal studies, which means that "thousands of students are admitted to law faculties, who are also voters and, after graduation, aspire to

[5] M. Hałajko, *Świadomy obywatel,* Warszawa 2019, p. 5, https://www.ore.edu.pl/wp-content/uploads/2019/12/program-nauczania-wiedzy-o-spoleczenstwie-pn.-swiadomy-obywatel.pdf (25.01.2024).

the social and state elites"[6]. However, this "massiveness" is assessed from the perspective of higher education. As far as the realisation of "elite aspirations" is concerned, some statistical findings can be cited in connection with the recent parliamentary elections. The profession of a lawyer is the second declared profession after a parliamentarian (politics), the third is a teacher[7]. It is difficult to consider these data a confirmation of the dominant role of lawyers in the political life of the Republic of Poland, although a "quantitative" analysis alone is not sufficient in this case.

On two points, however, the study of law is undoubtedly connected with civic education. The roles played by lawyers in social life include not only providing assistance in dealing with individual cases, but in particular assistance in court and administrative proceedings. Nowadays, conducting various types of civic actions as part of the framework also requires a certain "legal service". Secondly, civic education includes knowledge of the rights and duties of a citizen, but in a democratic state governed by the rule of law, they result from the Constitution, acts of international law, and statutes. It means that it is primarily lawyers who should directly carry out educational activities in this area.

---

[6] S. Kubas, *Zwolnij, profesorze – o społecznej doniosłości niespiesznej edukacji konstytucyjnej* [in:] *Dookoła Wojtek… Księga pamiątkowa poświęcona doktorowi Arturowi Wojciechowi Preisnerowi*, eds. R. Balicki, M. Jabłoński, Wrocław 2018, p. 406.

[7] In absolute numbers, this amounts to 104 parliamentarians, 62 lawyers and 44 teachers, respectively, K. Prachnio, *Powyborczy niezbędnik. Sprawdzamy, kto tworzy Sejm X kadencji*, https://mamprawowiedziec.pl/czytelnia/artykul/kto-tworzy-sejm-x-kadencji (5.02.2024).

It should be pointed out that the discussion on the shape of legal education in Poland has been going on in Poland (with breaks, of course) until Poland regained independence. Its beginning can be considered the polemic that took place in 1919–1921 in the "Przegląd Prawa i Administracji". Its subject was the problem of the usefulness of historical subjects in teaching law. Its importance is evidenced by the fact that the dispute was mainly fought by eminent scholars of the time, professors Juliusz Makarewicz and Oswald Balzer[8]. Nowadays – using the terminology of Jerzy Wróblewski – we can speak of a dispute between the supporters of the specialised (technical) and general (civic) model of legal studies, we can call it specialised and general, respectively. The former promotes a specialised model according to which legal education consists of teaching skills that enable effective action. Civic orientation promotes a model that recognises the multidimensionality of law and teaches the adoption of different theoretical, methodological and political perspectives[9]. At the same time, it is noted that the nature of legal education in Poland is still rooted in legal positivism of nineteenth-century origin. This results in a dogmatic approach to the legal text, which in principle excludes its critical analysis[10].

---

[8] M. Marszał, *Spór o model prawnika w Drugiej Rzeczypospolitej*, "Krakowskie Studia z Historii Państwa i Prawa" 2015, vol. 8, no. 2, p. 173.

[9] M. Stambulski, *Deficyt obywatelskości. Demokracja, edukacja prawnicza i kryzys władzy sędziowskiej*, "Państwo i Prawo" 2023, no. 11, p. 76.

[10] A. Skibińska, *Legal Dataism ex cathedra*, "Krytyka Prawa" 2000, vol. 12, no. 2, p. 156.

It is also necessary to point out that in the 21st century, it was pointed out that "we are witnessing an evident crisis of teaching law"[11].

Studying law is still very popular among young people and considered prestigious. Although the number of people who apply for admission to this field of study steadily decreases, it is still one of the most "crowded" ones. However, it is not possible today to simply repeat with Johann Wolfgang von Goethe that "legal studies are of course the most excellent" (*Studium iuris longe praestantissimum est*)[12]. At the time when it was expressed, this view had its basis not only in its author's biography. For centuries, lawyers have been counted among the spheres of the social elite. There were even views about their superior role, and it most clearly came to the fore in Germany in the eighteenth century. Simplifying the whole issue, it should only be noted that, according to the representatives of the so-called historical school, the lawyers' superior role was to be justified by their ability to read the "spirit of the nation". This spirit is manifested mainly in the customary law that characterises a given nation, and it is precisely lawyers who can correctly read and explain it[13].

---

[11] G. Jędrejek, *Review of Fryderyk Zoll's book "Jaka szkoła prawa? Czy amerykańskie metody nauczania prawa mogą być przydatne w Polsce", Warszawa 2004, pp. 145*, "Annals of Legal Sciences" 2015, no. 1(15), p. 325.

[12] J.W. Gothe, *Positiones Iuris*, thesis XLI, cited after R. Łyczywek, *Jan Wolfgang Goethe adwokat i doktor praw*, "Palestra" 1971, no. 3(159), p. 62.

[13] M. Szyszkowska, *Prawnicy jako elita*, "Palestra" 1995, vol. 39, no. 1–2, p. 136.

However, the view of the unique role of lawyers can be expressed more generally and it can be stated that their "privileges" are related to the treatment of the law as the superior normative system in the state and the knowledge of this group regarding the legal method. It is expressed, among others, in the ability to interpret legal provisions, with the ability to abstract thinking and linking the general with the individual, the concrete. The legal method is not the same as common sense. Therefore, it remains the domain of those who have mastered its "arcana"[14]. Of course, knowledge of these arcana is not possible without a university degree in law.

Nowadays, the so-called legal method is considered a myth. More specifically, it is pointed out that "methodological pluralism with regard to legal cognition means the acceptance of the proposition that there are many incommensurable methods that can be used by the lawyer: both logical and linguistic methods as well as economic methods, with particular emphasis on the economic analysis of law, argumentative methods, and even hermeneutic methods"[15]. With such an approach, the most important are the foundations for choosing a specific method, which is done in the process of "weighing, in which a number of factors should be considered: first of all, the type and degree of difficulty of the interpreted case, the interpretative context, the methodological habits of the interpreter himself, and finally – the dominant interpretative tradition"[16]. It seems that the quoted "master

[14] *Ibidem*, p. 137.

[15] J. Stelmach, *Pozytywistyczne mity metody prawniczej*, "Forum Prawnicze" 2012, no. 7, p. 14.

[16] *Ibidem*.

from Weimar" was at least partially (at least partially) aware of the ambiguity of the science of law, writing in Faust's monologue: "I have studied philosophy, I know law and medicine, and I have also learned theology. (…) But I'm a fool as I was. I haven't gained any wisdom. Even though I'm a master's degree and a doctor, and for decades I've been stubbornly leading my students by the nose with a tangled path of learning"[17]. Since, as mentioned, legal methodology is in fact somewhat "tangled", the teaching of law also becomes (at least to some extent).

At this point, it can be highlighted that the significance of university legal education should be seen not so much in the context of specific knowledge about the regulations provided to students, but in connection with the "methodological habits of the interpreter" and the "dominant interpretative tradition". These habits are formed under the influence of academics, and they also show law students what are the prevailing methods of interpretation, and which methods are "risky" or "archaic".

At this point, it seems appropriate to refer to the concept of the so-called hidden programme of legal education, which includes what is related to legal education, provided that it cannot be considered the result of an official (open) programme. Sometimes, the ways in which it is conveyed are as important as the content itself[18]. According to some, the "structure of education based on the intellectual model

[17] J.W. Goethe, *Faust. Tragedia*, Kraków 1996, p. 40.

[18] A. Czarnota, M. Paździora, M. Stambulski, *Ukryty program w edukacji prawniczej*, "Krytyka Prawa" 2018, vol. 10, no. 2, p. 102.

of law does not treat it as a socially contested phenomenon, but is closer to Harry-Potter's vision of law". With this approach, the law is treated in practice "as secret knowledge available only to a few who possess supernatural powers"[19].

Hence, it is not surprising that legal education does not contribute to building the attitude of a conscious and engaged citizen, but rather is ready to obey external authority[20].

Michał Stambulski also draws attention to serious methodological and pedagogical errors. In his opinion, there is no place for students to express their own opinions in class. Paradoxically, they do not develop the ability to listen; or, more precisely, critical listening. They do not come into contact with otherness, with the diversity of positions – they usually get to know only one position, and that is the view of the lecturer. This is nothing more than the so-called "professorial truth". Therefore, students are not prepared to engage in dialogue or to resolve conflicts of values[21].

III

The described "afflictions" do not omit the university teaching of constitutional law, but due to its specificity and

---

[19] *Ibidem*, p. 100; As a result, according to the authors, we are dealing with a paradox that at the ideological level, jurisprudence presents itself as democratic and defends democracy and equal human rights, while at the level of everyday educational practices (the hidden agenda), it reinforces anti-democratic elements.

[20] A. Czarnota, M. Paździora, M. Stambulski, *Nużąca konieczność. Powody podjęcia i ocena studiów prawniczych na WPAE UWr*, Wrocław 2017, p. 15.

[21] M. Stambulski, *Deficyt obywatelskości*…, p. 79.

the constitutional crisis, they have taken on a special character in this respect.

At the outset, it should be noted that in the multitude of contemporary events, an important anniversary for the development of the teaching of constitutional law at the academic level has passed imperceptibly. In 1872, 150 years ago, Professor Franciszek Kasparek began lecturing on political law as a separate subject at the Faculty of Law of the Jagiellonian University[22]. Also in that year, the first lectures on political law in Polish began at the University of Lviv. In Lviv, classes in general political law conducted by Feliks S. Gryziecki were separate, while Tadeusz Pilat presented the political law of the Habsburg Monarchy to students in 1872––1883. From the organisational perspective, the distinction of the subject corresponding to today's constitutional law took place a little later. It was not until 1889 that Stanisław Starzyński was appointed to the chair of general and Austrian political law that the first independent chair of constitutional law was established at the University of Lviv (at that time its patron was not yet the Jan Kazimierz University), and in connection with the situation at the Jagiellonian University, probably also at any (at least in the linguistic sense) Polish university[23].

---

[22] *Kronika Nauk Politycznych w Uniwersytecie Jagiellońskim*, https://wsmip.uj.edu.pl/c/document_library/get_file?uuid=327680e2--c2d5-4046-8ced-51b3a0916054&groupId=2055145 (15.02.2024), p. 5.

[23] A. Redzik, *Nauczanie i nauka prawa politycznego na Uniwersytecie Jana Kazimierza we Lwowie*, "Przegląd Sejmowy" 2007, no. 5(82), p. 112. The applications of the Faculty of Law of the Jagiellonian University for the establishment of a chair of political law were rejected by the relevant ministry on several occasions.

However, historical curiosities must not obscure the present. As far as legal education in constitutional law is concerned, three model concepts of this subject have been distinguished from a theoretical perspective. Without going into details, according to the first one, it is a kind of general subject, introducing a law student to specialist education at further stages of studies (so it is a kind of propaedeutic of knowledge about law). The second possibility is to assume that we are dealing with a discipline that "allows us to practice and disseminate didactically a methodology of work similar to the dogmatics of law". Teaching constitutional law in this approach is "didactics limited by the subject matter of the text of the Constitution and a certain group of Constitution-related acts" and other legal acts. The third way is to "combine" the teaching of constitutional law with the transfer of general knowledge, primarily in the area of political philosophy and philosophy of law, and the student should also learn something "about the diversity of the very concepts of the Constitution, about the divergent currents of constitutionalism, about the disputes over the interpretation of the Constitution"[24]. Of course, each of these concepts has some advantages, but also disadvantages. Since the third concept seems a compromise, at first glance, it is the most attractive.

From a general perspective, two important considerations must not be overlooked. Firstly, classes in constitutional law, which are compulsory for all law students, usually take place

[24] A. Bator, P. Kaczmarek, *Kim ma być wychowanek akademii prawniczej? O perspektywach budowania edukacji prawniczej wokół konstytucji*, "Krytyka Prawa" 2018, vol. 10, no. 2, pp. 24–25.

in the first year of studies. Classes are conducted in the first (or partly in the second year of studies). It is pointed out that first-year law students are usually poorly "prepared at earlier stages of their education to undertake university-level education" and most of them are unable to understand some of the more complex constitutional provisions "at a basic level of grammatical analysis"[25]. Secondly, a significant number of students approach their studies practically, the problem of passing the subject is important to them, and due to the popularity of test exams, they focus on specific unambiguous issues rather than complicated (ambiguous) problems and on the interpretative processes themselves. Naturally, these phenomena are related to the mentioned mass nature of legal studies.

The assumptions of university teaching of constitutional law are partly convergent with the goals of civic education. Of course, this applies to the cognitive aspect (transfer of knowledge), as well as the acquisition of certain skills and the so-called social competencies. It is clear that an informed citizen knows and understands the Constitution of his country. However, it is difficult to consider this as sufficient. What is needed is an evaluative attitude, and in a democratic state, an affirmative attitude towards the Constitution, or at least its most important assumptions. In this aspect, legal studies look a bit different, because the scientific knowledge that should be passed on during them is based (generally speaking) on criticism, constant doubt in previously accepted findings, and the search for new findings.

---

[25] S. Kubas, *Zwolnij, profesorze*…, p. 409.

At this point, we can return to the problem of myths. One can agree with the statements according to which "myths are persuasive, they appeal to emotions, which provides them with exceptional communicativeness – they have the power to convince a much larger group of people than cool, rational reflection, especially when it concerns specialist issues, understandable only to experts"[26]. Therefore, the problem arises as to whether it is possible to build a permanent base of scientific knowledge based on the myth of the Constitution as a social contract or the assumption of its highest rank in the legal order, which should be passed on (uncritically in relation to the Basic Law) to students. While civic education is necessarily based (in a democratic state) on not questioning the Constitution (or at least its basic principles and values), it is difficult to base university teaching of constitutional law on this. However, we must not forget about the socio-political context of the whole issue, i.e., the specific situation of the constitutional crisis.

IV

The practice of applying the Constitution, changes in its interpretation, the actions adopted in practice by state bodies since autumn 2015, and significant amendments to many "constitutional-related acts", have put a certain question mark over the sense of treating constitutional law as one of the dogmatic subjects. There is no space here to list all the most important elements of the constitutional crisis in

[26] K. Koźmiński, *Mity państwa prawa*, "Pressje" 2017, File 50, p. 84.

Poland[27]. It is only important to emphasise that it did not end in the fall of 2023, it has only changed its character.

From a didactic perspective, the constitutional crisis has led to a situation in which it is not easy to determine what the legal status "really" looks like and how to assess its constitutionality in many respects. Referring to the previous remarks, it should be noted that this gives rise to a certain temptation for those who lead to the seizure to "deny the problem" by "escaping" to general considerations in the philosophy of law[28]. Hence, the question has become topical: "how then to expound constitutional law without reducing it to the study of history and distant doctrines?"[29]

At the same time, it should not be forgotten that constitutional law is the "most politicised subject of law"[30]. This causes, among other things, that deep political divisions in society "seep into" it. An unambiguous stance may give rise to the suspicion that it is conditioned by political considerations and may be judged from this perspective.

At the same time, there are several significant consequences – also for the effectiveness of the didactic process.

---

[27] W. Mojski, *Kryzys konstytucyjny. Zagadnienia teorii konstytucji,* Lublin 2023.

[28] P. Czarny, B. Naleziński, *Jak uczyć dziś prawa konstytucyjnego? Refleksje dydaktyczne* [in:] *Nauka prawa a praktyka prawnicza. Księga jubileuszowa z okazji czterdziestolecia Okręgowej Izby Radców Prawnych w Krakowie*, eds. M. Araszkiewicz, M. Krok, M. Sala-Szczypiński, Kraków 2022, pp. 92–94.

[29] M. Grant, *Prawo konstytucyjne. Pytania i odpowiedzi*, Warszawa 2021, p. 24.

[30] R.M. Małajny, *Wstęp* [in:] *Polskie prawo konstytucyjne na tle porównawczym*, ed. R.M. Małajny, Warszawa 2013, p. 1.

According to Krzysztof Koźmiński, the "crisis intensifies the attractiveness of myths, fosters the popularity of images that in other circumstances would be treated with a healthy distance, cautious scepticism, subject to verification and falsification, and legal education, and observers without sophisticated instruments can see that the problem concerns the relationship between law and politics, and is not just a legal dispute"[31]. In other words, the constitutional crisis means that the explanation of some problems that would have previously been considered quite simple becomes the subject of complex analyses and "entangled" in political disputes. It is not difficult to see that the constitutional crisis has indeed also revealed that the law (mainly the Constitution), which was supposed to bring order to the political reality – mainly through an "indelible interpretative element" – is becoming a source of doubts and conflicts[32].

Therefore, in conclusion, it is appropriate to return to the issue of legal method and the role of legal studies in consolidating assumptions that (at least in part) have the character of certain conventions adopted in the course of centuries of legal evolution. It seems that during a constitutional crisis, a critical attitude towards existing concepts, arrangements, and rules, characteristic of scholarship, should not lead to constitutional "nihilism", but to exposing the "interpretative habits" proper to the Constitution, in particular indicating that the linguistic interpretation in this case is highly unreliable and insufficient. Needless to say, this should be done

[31] K. Koźmiński, *Mity państwa*…, p. 84.
[32] *Ibidem*, p. 88.

without imposing ready-made answers and solutions to contentious problems on the recipients.

Literature

Bator A., Kaczmarek A., *Kim ma być wychowanek akademii prawniczej? O perspektywach budowania edukacji prawniczej wokół konstytucji*, "Krytyka Prawa" 2018, vol. 10, no. 2.

Czarnota A., Paździora M., Stambulski M., *Nużąca konieczność. Powody podjęcia i ocena studiów prawniczych na WPAE UWr*, Wrocław 2017.

Czarnota A., Paździora M., Stambulski M., *Ukryty program w edukacji prawniczej*, "Krytyka Prawa" 2018, vol. 10, no. 2.

Czarny P., Naleziński B., *Jak uczyć dziś prawa konstytucyjnego? Refleksje dydaktyczne* [in:] *Nauka prawa a praktyka prawnicza. Księga jubileuszowa z okazji czterdziestolecia Okręgowej Izby Radców Prawnych w Krakowie*, eds. M. Araszkiewicz, M. Krok, M. Sala-Szczypiński, Kraków 2022.

Goethe J.W., *Faust. Tragedia*, Kraków 1996.

Granat M., *Prawo konstytucyjne. Pytania i odpowiedzi*, Warszawa 2021.

Hałajko M., *Świadomy obywatel*, Warszawa 2019.

Jędrejek G., *Review of Fryderyk Zoll's book "Jaka szkoła prawa? Czy amerykańskie metody nauczania prawa mogą być przydatne w Polsce", Warszawa 2004, pp. 145*, "Roczniki Nauk Prawnych" 2015, no. 1(15).

Koźmiński K., *Mity państwa prawa*, "Pressje" 2017, File 50.

Kronika Nauk Politycznych w Uniwersytecie Jagiellońskim, https://wsmip.uj.edu.pl/c/document_library/get_file?uuid=327680e2-c2d5-4046-8ced-51b3a0916054&groupId=2055145 (15.02.2024).

Kubas S., *Zwolnij, profesorze – o społecznej doniosłości niespiesznej edukacji konstytucyjnej* [in:] *Dookoła Wojtek… Księga*

pamiątkowa poświęcona doktorowi Arturowi Wojciechowi Preisnerowi, eds. R. Balicki, M. Jabłoński, Wrocław 2018.

Łyczywek R., *Jan Wolfgang Goethe adwokat i doktor praw*, "Palestra" 1971, no. 3(159).

Marszał M., *Spór o model prawnika w Drugiej Rzeczypospolitej*, "Krakowskie Studia z Historii Państwa i Prawa" 2015, vol. 8, no. 2.

Mojski W., *Kryzys konstytucyjny. Zagadnienia teorii konstytucji*, Lublin 2023.

Napoleon, *Maksymy*, Warszawa 1983.

Polskie prawo konstytucyjne na tle porównawczym, ed. R.M. Małajny, Warszawa 2013.

Prachnio K., *Powyborczy niezbędnik. Sprawdzamy, kto tworzy Sejm X kadencji*, https://mamprawowiedziec.pl/czytelnia/artykul/kto-tworzy-sejm-x-kadencji (5.02.2024).

Redzik A., *Nauczanie i nauka prawa politycznego na Uniwersytecie Jana Kazimierza we Lwowie*, "Przegląd Sejmowy" 2007, no. 5(82).

Skibińska A., *Legal Dataism ex cathedra*, "Krytyka Prawa" 2020, vol. 12, no. 2.

Stambulski M., *Deficyt obywatelskości. Demokracja, edukacja prawnicza i kryzys władzy sędziowskiej*, "Państwo i Prawo" 2023, no. 11.

Stelmach J., *Pozytywistyczne mity metody prawniczej*, "Forum Prawnicze" 2012, no. 7.

Szyszkowska M., *Prawnicy jako elita*, "Palestra" 1995, vol. 39, no. 1–2.

Katarzyna Szwed
ORCID: 0000-0002-2755-2804
University of Rzeszów

Limits of the Implementation of the Constitutional Right to Information about the Environment and Its Protection

I

The right to information about the environment and its protection is an instrument of social control of state authorities, promotes transparency of public life, and is one of the elements of a modern state governed by the rule of law. Moreover, with the growing environmental awareness, it is becoming increasingly important, which is reflected in the frequency of its use. It is obvious that access to information about the environment and its protection allows for the identification of threats that pose a potential or real danger, not only to the natural environment, but also directly to human life and health. Therefore, it is difficult not to see its potential for the formation of civil society. The implementation of this right is an important building block for strengthening social participation. It provides the basis for the real participation of the individual, and various types of non-governmental organisations, in decision-making

processes influencing the preservation of the natural environment in an undeteriorated condition for present and future generations and the implementation of the policy of sustainable development.

However, in order for the right to information on the environment and its protection to fulfil its tasks, the provision of facts and data concerning the broadly understood natural environment should be the rule, and refusal should be the exception. This is also how this right is shaped by national and international regulations. According to the letter of the law, derogations from the principle of openness take place only in justified cases. In this context, the role of environmental awareness and knowledge should be emphasised on the part of individuals and officials. Ultimately, the effectiveness of the application of this right is determined by the ability to use it in practice. This study aims to indicate the limitations – legal and factual – in the scope of exercising the constitutional right to information about the environment and its protection.

II

According to the typology of rights presented by Karel Vasak, the right to environmental information belongs to the third generation of human rights, referred to as solidarity rights[1].

[1] The roots of the right to environmental information go back to one of the fundamental human rights, which is the right to information. It stems from Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, which emphasises that the right to receive and impart information is an integral part of the right to freedom of expression, and Article 19 of

Currently, it is a universally accepted component of the human rights system, established by international, EU, and national regulations. In this context, the provisions of the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (hereinafter: the Aarhus Convention)[2] and Directive 2003/4/EC on public access to environmental information are of paramount importance[3].

In the Polish legal system, the right to information about the environment and its protection is a constitutional right, which corresponds to the nature of the Polish Constitution, which in particular emphasises the issues of environmental protection[4]. It is reflected in the extensive regulation of the matter in Articles 5, 31, 68, 74, and 86 of the Constitution of the Republic of Poland[5]. It is also confirmed by

---

the International Covenant on Civil and Political Rights, which states that everyone has the right to seek, receive, and disseminate information. The position of this right is also indicated by numerous judgments of the Constitutional Tribunal and the European Court of Human Rights.

[2] Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, Aarhus on 25 June 1998, OJ 2003, no. 78, item 70.

[3] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC. L 41, 14 February 2003.

[4] A. Habuda, W. Radecki, *Stan polskiej nauki prawa ochrony środowiska w 40 lat po raporcie u Thanta*, "Studia Prawnicze" 2009, no. 3 (181), p. 147.

[5] The mentioned constitutional regulations relating to environmental protection allow it to be regarded as a fundamental task of

the jurisprudence of the Constitutional Tribunal. Suffice it to mention the judgment of the Constitutional Tribunal of 7 June 2001, case no. K 20/00, in which the Constitutional Tribunal recognised environmental protection as one of the fundamental values protected by the Basic Law[6]. However, according to Marieta Czekałowska, the "saturation of environmental protection issues in constitutional provisions, manifested in emphasising the good of caring for the environment, does not prove the effectiveness and efficiency of counteracting violations of the state of the environment, as well as taking action regarding specific reactions to events occurring in the environment"[7]. The multitude of regulations does not necessarily translate into the actual cultivation of values related to environmental protection.

The right to information about the environment is explicitly included in Article 74(3) of the Constitution of the Republic of Poland and is a concretisation of the more general right to public information included in Article 61(1) of

---

the state, the basis for the restriction of constitutional rights and freedoms, the concretisation of the tasks and duties of public authorities, as well as the obligation incumbent on the individual. M. Górski, *Komentarz do art. 74* [in:] *Konstytucja RP*, vol. 1: *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016, p. 1691; J. Ciechanowicz-McLean, *Globalne prawo środowiska. Podstawowe zagadnienia*, Gdańsk 2021, p. 61.

[6] Judgment of the Constitutional Tribunal of 7 June 2001, K. 20/00, OTK ZU no. 5/2001, item 119.

[7] M. Czekałowska, *Zagadnienia ochrony środowiska na podstawie Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warszawa 2022, pp. 155–156.

the Constitution of the Republic of Poland[8]. Article 54(1) and (3) of the Constitution on the freedom to express one's views and to obtain and disseminate information and the right of access of everyone to official documents and personal data sets concerning them is also referred to in Article 54(1) and (3). It should be noted that according to Article 81 of the Constitution of the Republic of Poland, the right to information on the state and protection of the environment may be asserted only within the limits specified in the Act. Currently, the Act of 3 October 2008 on Providing Information on the Environment and Its Protection, Public Participation in Environmental Protection, and Environmental Impact Assessments (hereinafter: the Environmental Impact Assessment Act) is considered the core of the regulations concerning this matter[9].

Environmental and sub-laws have evolved significantly. They have changed mainly under the influence of international and EU regulations, but also in response to the low environmental awareness of the society combined with the lack of proper understanding of the obligation of transparency

[8] It is worth noting that the scope of information obtained by invoking Article 61 and Article 74(3) of the Constitution of the Republic of Poland will not always coincide in terms of subject-matter. M. Jabłoński, K. Wygoda, *Konstytucyjne uprawnienia jednostki w sferze informacyjnej* [in:] *Sześć lat Konstytucji RP. Doświadczenia i inspiracje*, Warszawa 2003, p. 129.

[9] Act of 3 October 2008 on Providing Information on the Environment and Its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments, Journal of Laws of 2008, no. 199, item 1227.

by public authorities[10]. At present, the latter premise is slowly losing its importance. The public is increasingly interested in the state of the environment – air quality, water purity, or waste disposal. Unfortunately, this interest often is caused by loud media reports about the pollution of the ecosystem, and less often by the consistently implemented care for the environment in which we live.

III

The provision of Article 74(3) of the Constitution creates a subjective right to the environment. The analysis of constitutional provisions allows us to believe that the Polish legislator sought to ensure wide access to information about the environment and its protection, and thus also to strengthen social participation. It should be remembered that apart from the obvious manifestations of civic activity in the form of participation in a specific procedure, local referendum or public consultations, it should also include access to public information, including information on the environment. Having reliable data on the state of the environment and its protection is the starting point for the real active participation of citizens in decision-making processes in the field of environmental protection. The right of access to the environment is a prerequisite for the implementation of other environmental protection principles and also serves as an independent instrument.

---

[10] M. Nyka, *Dostęp do informacji o środowisku w systemie prawa ochrony środowiska* [in:] *Zagadnienia systemowe prawa ochrony środowiska*, ed. P. Korzeniowski, Łódź 2015, p. 181.

The provision of information about the environment takes place in two modes, namely non-inferential and inferential. In the first place, information on the environment and its protection is disseminated through publicly available data inventories. The obligation for the competent authorities to keep them arises from Article 21 of the Environmental Protection Act. They are kept in electronic form and made available in the Public Information Bulletin. They make it possible to determine what documents are at the disposal of the authority. As in other areas of life, the effectiveness of this law is increasing thanks to digitisation. The dynamic development of new technologies has changed the public perception of dealing with official matters. Information that previously seemed difficult to obtain or burdened with the burden of bureaucracy has become easily accessible and widely used thanks to electronic tools.

Nevertheless, the application procedure should still be considered the basic form of applying for information on the environment and its protection. It is worth remembering that a written request is not required if the information would enable action to be taken to prevent or minimise damage resulting from a natural disaster, other disaster, or technical failure, or other imminent threat to human health or the environment, caused by human activity or natural causes, or when the information does not require retrieval[11].

The form of the request for access provided for in the Act does not constitute an obstacle to broad access to environmental information[12]. First of all, it is a written

[11] Article 12(2) of the Environmental Protection Act.

[12] Article 9(2) of the Environmental Protection Act.

form – traditional and electronic. In some circumstances, even the oral form is acceptable. It is common practice to create ready-made forms available in a digital version. Public administrations should provide information in the form indicated in the request. However, if this is not possible, the applicant has the right to decide in what other way the requested information will be provided to him.

IV

The right to request information about the environment and its protection is not subject to any subjective limitations. Everyone is entitled to it. It does not require Polish citizenship. It can be used by natural and legal persons, including social organisations. In this case, there is no obligation to demonstrate a legal or factual interest, which makes access to information on the environment and its protection more effective and conducive to its use[13]. From the perspective of public administration bodies, the purpose of providing the requested information is irrelevant and beyond possible investigation. Considering the current geopolitical situation and the possible acts of sabotage, this solution has been criticised in the context of national security[14].

Broadly understood central and local government administration bodies at all levels are obliged to provide information on the environment and its protection that is in

[13] A. Haładyj, *Ochrona danych osobowych i inne przesłanki odmowy udostępniania informacji o środowisku zawartych w protokołach pokontrolnych*, "Studia Prawnicze KUL" 2016, no. 1(65), p. 36.

[14] M. Nyka, *Dostęp do informacji…*, p. 191.

their possession or intended for them. However, this does not follow directly from Article 74(3) of the Constitution, but from statutory provisions[15]. Indeed, at the constitutional level, the entity under which the obligation is not expressly defined, let alone the fact that that obligation rests solely with the public authorities[16]. Importantly, according to the provisions of the Environmental Protection Act, information relating to legislative activity and, in the case of courts and tribunals, judicial activity is not provided[17]. Information intended for an authority is understood as information that is held by third parties on behalf of the administrative body, including information that the authority has the right to request from third parties. On the other hand, information held by an administrative authority is information that the authority has, has produced or received from a third party[18].

In this context, it is important to highlight the complex structure of environmental authorities and the ambiguous division of competencies between them. Currently, the responsibilities of environmental authorities are scattered in at

[15] Article 8 of the Environmental Protection Act.

[16] This theme is further developed by: J. Węgrzyn, *Konstytucyjne prawo do informacji o ochronie środowiska na tle standardów międzynarodowych*, "Przegląd Prawa Konstytucyjnego" 2011, no. 3(7), p. 210.

[17] Article 8 of the Act of 3 October 2008 on Providing Information on the Environment and Its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments, Journal of Laws of 2008, no. 199, item 1227.

[18] Article 3(2) and (3) of the Environmental Protection Act

least 84 different acts[19]. This gives rise to a number of difficulties for the applicant. At the outset, it may be problematic to determine which authority has jurisdiction over the issue that is the subject of the application. If the authority does not have the information, it should provide it to the entity that has it, and if it is not able to determine it, it should return the application to the applicant[20]. In practice, this may mean forwarding the request to other authorities, which at best prolongs obtaining information or ultimately results in it not being processed. The applicant then restarts his efforts to obtain access to the requested information. It is worth recalling the judgment of the Provincial Administrative Court in Kraków of 11 August 2020[21], according to which the authority is not obliged to provide access to a document which it does not have, provided that it has made unsuccessful attempts to obtain it. It is irrelevant that, in the applicant's opinion, the authority should be in possession of the requested document. According to the judgment, there is no right to appeal against the failure of the authority to act.

V

The material scope of the term "environmental information" included in the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and on

[19] M. Czekałowska, *Zagadnienia ochrony…*, p. 158.

[20] Article 19(2)(1) and (2) of the Environmental Protection Act.

[21] Judgment of the Provincial Administrative Court in Kraków of 11 August 2020, II SAB/Kr 83/20, LEX no. 3075983.

environmental impact assessments is a relatively faithful reflection of the provisions of the Aarhus Convention and Directive 2003/4/EC, i.e., two key international documents in the field of the right of access to environmental information. It should be noted that Article 9 of the said Act does not so much provide a legal definition of the term as it merely indicates the categories of information classified as environmental information[22].

It should be pointed out that there are two parallel legal regimes in terms of access to information. Environmental information often meets the criterion of being considered public information, which may lead to a conflict between the provisions of the Act of 6 September 2001 on Access to Public Information[23] and the Act on Public Information[24].

---

[22] The following information is made available, e.g., relating to: the state of the environment, i.e., air, water, land surface, minerals, climate, landscape, and natural areas, including wetlands, coastal, and marine areas, as well as plants, animals, and fungi and other elements of biodiversity, including genetically modified organisms; emissions and pollutants affecting or likely to have an impact on the environment; analyses, legal provisions, plans, programmes, agreements that impact the environment and its protection; reports implementing environmental protection regulations; the state of health, safety, and living conditions of people related to the state of the environment, as well as the condition of cultural and construction facilities in terms of environmental impact and emissions.

[23] Act of 6 September 2001 on Access to Public Information, Journal of Laws of 2001, no. 112, item 1198.

[24] A. Barczak, *Dostęp do informacji publicznej a dostęp do informacji dostęp do informacji o środowisku i jego ochronie. Rozważania na tle udostępnienia zezwolenia na zbieranie odpadów*, "Krytyka Prawa. Niezależne Studia nad Prawem" 2023, vol. 15, no. 1, p. 103.

It is then necessary to decide on the appropriate procedure for conducting the procedure for making information available. In case of an incorrect application of the legal regime, the authority does not provide the requested information and instructs the applicant on the procedure required by law[25]. In principle, the principle of *lex specialis derogat legi generali* applies. On the other hand, the fact that certain issues are not covered by the provisions of the Act on the Protection of Persons with Disabilities means that the provisions of the Act on the Protection of Persons with Disabilities apply[26].

The right to information about the environment and its protection is not absolute. There are obligatory and optional conditions limiting them. They are set out in detail in Article 16(1) and (2) of the Environmental Protection Act. This list is exhaustive. The ordinary legislator has listed in detail the cases when the authority refuses to provide information on the environment and its protection. This is the case if their submission may violate:

- data protection provided in the provisions on the protection of classified information;
- the course of ongoing judicial, disciplinary, or criminal proceedings;
- intellectual property rights referred to in the Act of 4 February 1994 on Copyright and Related Rights (Journal of Laws of 2022, item 2509) or in the Act of 30 June 2000 – Industrial Property Law (Journal of Laws of 2021, item 324, of 2022, item 2185, and of 2023, item 588);

[25] *Ibidem*, p. 108.

[26] A. Hałady, *Ochrona danych*…, p. 35.

- protection of personal data concerning third parties, if it is provided for by separate provisions of law;
- protection of information or data provided by third parties, if such persons, without being obliged to provide it and not being able to be burdened with such an obligation, have provided it voluntarily, unless they have consented to its disclosure;
- the state of the environment to which the information relates, in particular by revealing the refugium or habitat of protected species, animals, and fungi;
- protection of information of commercial value, including technological data, provided by third parties and covered by trade secrets, if such persons have submitted a request to exclude such information from disclosure, including a detailed justification for the possibility of their competitive position being impaired;
- national defence and security;
- public safety;
- protection of statistical secrecy provided for in the regulations on official statistics[27].

In addition to these mandatory conditions, public authorities may also refuse to provide information on the environment and its protection if this would require the provision of documents or data in the process of being developed or data intended for internal communication. Moreover, where the proposal is manifestly impossible to implement or is formulated in too general terms[28]. Optional conditions form a much shorter list than the obligatory ones. Refusal

[27] Article 16(1) of the Environmental Protection Act.
[28] Article 16(2) of the Environmental Protection Act.

to provide information on the environment and its protection is made by an administrative decision. Thus, the applicant has a claim against the state to enforce the exercise of the right to request environmental information. In case of refusal to provide information on the environment, the regulations provide for the possibility of filing an appeal and then a complaint to the administrative court. A complaint against the failure of the authority to act may be lodged in case of failure to provide information on time.

The list of information on the environment and its protection that is not subject to disclosure is enumerative and does not raise any objections. It does not go beyond the framework adopted in the Aarhus Convention and clearly corresponds with other international obligations resulting from, for example, membership in NATO or the EU[29]. A narrow definition of the obligatory and optional grounds for refusal to disclose environmental information underlines the intention of the legislator and the ordinary legislator to ensure that interested parties have the widest possible access to it. The transparency of the activities of public authorities in this area allows for social control and, as a result, for the correction of the implemented policy. It should also be emphasised that there are solid guarantees that the administrative body will be proactive by filing an appeal against a decision to disclose information.

When it comes to environmental protection, reaction time can be decisive for achieving a positive outcome. It seems that the waiting time for the authority's response is one of

[29] J. Węgrzyn, *Konstytucyjne prawo…*, p. 217.

the significant problems faced by applicants[30]. The submission of the information required by law often is unjustifiably extended to the maximum statutory deadline. As a general rule, environmental information should be provided without undue delay, but no later than one month after receipt of the request. Only the complexity of the case may justify an extension of the time limit to two months[31]. At the same time, however, it should be noted that the ordinary legislature has guaranteed extraordinary access to information when it serves to prevent or counteract an already existing threat.

Regarding the issue of charging fees related to the provision of environmental information, it should be emphasised that their amount should not constitute an obstacle to the exercise of this subjective right. That is why the Act sets out the maximum rates and indicates a catalogue of services that are chargeable. The fee is charged based on the costs associated with preparing the information to be made available, not the provision of the information itself[32]. Providing information in an individualised form creates a need for the authority to involve employees, which often comes at the expense of their basic tasks.

---

[30] P. Chylarecki, M. Wiśniewska, J. Engel, *Dostęp do informacji o środowisku i udział w decyzjach dotyczących środowiska: społeczna kontrola praktyk administracji publicznej*, Warszawa 2014, p. 54.

[31] Article 14 of the Environmental Protection Act.

[32] A fee is not charged for the provision of information itself, but for specific activities related to this fact, including: searching for information, converting it into the form indicated in the access request, making copies of documents or data and sending them. Article 26(2) of the Environmental Information Disclosure Act.

The key problem is not the rates of fees, because these are unanimously considered by both officials and applicants not too excessive and do not constitute a financial barrier. Jacek Murzydło sees the threat in the lack of precise legal regulations concerning the date and manner of payment of fees for the provision of environmental information. As a consequence, this leads to divergent procedures applied in this area by public administration bodies[33]. The main problem is the possibility for the authority to make the provision of information conditional on the prior payment of the fee by the applicant[34]. On the one hand, failure by the authority to provide the legally required information may lead to a complaint against the authority's inaction, while on the other hand, the subsequent effective enforcement of the fee for providing information from the applicant seems to be highly doubtful.

Finally, it is worth noting that entities requesting access to information on the environment and its protection often receive unsatisfactory or incomplete information. On the other hand, there is no doubt that only reliable information, i.e., truthful and credible, can be a tool for improving the condition of the natural environment, and thus fulfil the intention of the legislator for granting the right in question to the individual. The transparency of the activities of public administration bodies requires that information on the environment fully and truly reflects the actual state of affairs, and is not just an apparent fulfilment of an obligation imposed by law.

---

[33] J. Murzydło, *Dostęp do informacji o środowisku w systemie prawa ochrony środowiska*, "Finanse Komunalne" 2021, no. 2, p. 45.

[34] *Ibidem*.

VI

The shape of the constitutional regulations and their specification at the statutory level, allows us to believe that the right of access to information about the environment and its protection should serve the transparency of the activities of public authorities and be subject to as few restrictions as possible. In fact, it is an extremely important tool for activating individuals and associations. The state of the natural environment has ceased to be only a subject of scientific research, and has become a topic close to ordinary people. The well-known and broadly reported cases of air and water pollution in Poland provoke scrupulous accountability of public authorities for the performance of tasks entrusted to them in the field of care for the state of the environment – with the present and future generations in mind.

It seems that the limits of the exercise of the constitutional right to information about the environment and its protection do not run through legal acts, but are erected by specific institutions applying environmental regulations. The problems that arise are less often the result of the adopted systemic solutions, and more often the result of insufficient knowledge and limited agency of public administration bodies. Although the increase in knowledge and awareness in the field of ecology, the strengthening of participation and the dissemination of access to information about the environment through digitisation need to be appreciated, there are still areas for improvement. The multiplicity of legal regulations concerning the environment, the complex structure of public administration bodies, but also the lack of consistency in the practice of the authorities' operations

mean that access to environmental information may encounter certain limitations in practice. Reliability and timeliness in the provision of information should be considered crucial. Otherwise, we expose ourselves to environmental losses, the consequences of which can be far-reaching and difficult to reverse.

Literature

Barczak A., *Dostęp do informacji publicznej a dostęp do informacji dostęp do informacji o środowisku i jego ochronie. Rozważania na tle udostępnienia zezwolenia na zbieranie odpadów*, "Krytyka Prawa. Niezależne Studia nad Prawem" 2023, vol. 15, no 1.

Chylarecki P., Wiśniewska M., Engel J., *Dostęp do informacji o środowisku i udział w decyzjach dotyczących środowiska: społeczna kontrola praktyk administracji publicznej*, Warszawa 2014.

Ciechanowicz-McLean J., *Globalne prawo środowiska. Podstawowe zagadnienia*, Gdańsk 2021.

Czekałowska M., *Zagadnienia ochrony środowiska na podstawie Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warszawa 2022.

Górski M., *Komentarz do art. 74* [in:] *Konstytucja RP*, vol. 1: *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016.

Habuda A., Radecki W., *Stan polskiej nauki prawa ochrony środowiska w 40 lat po raporcie u Thanta*, "Studia Prawnicze" 2009, no. 3(181).

Haładyj A., *Ochrona danych osobowych i inne przesłanki odmowy udostępniania informacji o środowisku zawartych w protokołach pokontrolnych*, "Studia Prawnicze KUL" 2016, no. 1(65).

Jabłoński M., Wygoda K., *Konstytucyjne uprawnienia jednostki w sferze informacyjnej* [in:] *Sześć lat Konstytucji RP. Doświadczenia i inspiracje*, eds. L. Garlicki, A. Szmyt, Warszawa 2003.

Murzydło J., *Dostęp do informacji o środowisku w systemie prawa ochrony środowiska*, "Finanse Komunalne" 2021, no. 2.

Nyka M., *Dostęp do informacji o środowisku w systemie prawa ochrony środowiska* [in:] *Zagadnienia systemowe prawa ochrony środowiska*, ed. P. Korzeniowski, Łódź 2015.

Węgrzyn J., *Konstytucyjne prawo do informacji o ochronie środowiska na tle standardów międzynarodowych*, "Przegląd Prawa Konstytucyjnego" 2011, no. 3(7).

Krystian Tuczyński
ORCID: 0000-0001-8220-2199
University of Rzeszów

Legal Aspects of Academic E-Learning: Challenges and Solutions

Introduction

E-learning, as a dynamic form of education, plays an undeniable role in transforming society, adapting to modern digital trends. Along with the growing importance of e-learning understood as a tool, there are significant legal challenges that are worth considering. This article focuses on the role of e-learning in today's society and aims to analyse legal challenges, identify potential problems and propose viable solutions[1].

E-learning is not only a modern method of transferring knowledge, but also a tool that plays a key role in acquiring skills, accessing distance education, and adapting to the needs of learners in a changing world. Technological changes, especially in computer science, are making

[1] M. Machalska, *Digital learning. Od e-learningu do dzielenia się wiedzą*, Warszawa 2022, p. 17.

e-learning an integral part of the educational process, offering flexibility, accessibility, and personalisation of learning.

In the context of the growing role of e-learning, legal issues related to this form of education are becoming increasingly important. This paper aims to explore the legal challenges faced by e-learning providers and the participants in this process. The analysis focuses on identifying potential issues related to copyright, data protection, regulatory compliance, and general aspects of participation in e-learning[2].

The author looked at how e-learning shapes the future of education, while also attempting to understand and resolve the legal difficulties that may arise in this dynamic space. By analysing these issues, the paper aims to provide practical tips and proposals for solutions that can contribute to the effective management of e-learning in the context of legal aspects[3].

Academic E-Learning – Analysis of the Phenomenon

An integral part of today's academic landscape, e-learning plays a key role in the revolution in teaching and learning methods. This dynamic phenomenon is not just a digital toolbox, but a truly ground-breaking approach to education,

---

[2] A. Bednarczyk-Płachta, *Prawne aspekty wprowadzania e-learningu w szkołach wyższych* [in:] *Metody i narzędzia zapisu i udostępniania danych*, eds. T. Grabiński, D. Wilk-Kołodziejczyk, M. Woźniak-Zapór, Kraków 2014, pp. 11–34.

[3] J. Rudowicz-Nawrocka, J. Weres, *Rola i możliwości zdalnego nauczania w kształceniu studentów i doradztwie rolniczym na przykładzie pakietu IMARK*, "Inżynieria Rolnicza" 2005, no. 8, pp. 333––341.

aimed at transforming the traditional model of teaching. Its importance continues to grow in academia, with the ambitious goal of changing the paradigms that shape the way knowledge is acquired and transmitted[4].

It offers unlimited flexibility to students and teachers, allowing them for accessing teaching content anytime, anywhere. It transforms learning into an interactive environment where participants become active, involved in the process, rather than just passive recipients of information[5].

A central element of academic e-learning is the development of digital skills while teaching self-discipline and self-reliance. Modern platforms make it possible to adjust the pace of learning to individual needs, which is conducive to diverse learning styles. This makes it a tool for inclusion, extending access to education for people with different experiences and abilities[6].

In the context of teaching effectiveness, academic e-learning must meet high standards. Research on the effectiveness of this model compared to traditional methods is crucial to understand the extent to which it translates into achieved

---

[4] M. Galbarczyk, P. Kozłowski, T. Krawczyk, A. Pacholak, D. Sidor, M. Wilkin, *Wdrażanie e-nauczania na Uniwersytecie Warszawskim – strategie, modele, efekty* [in:] *Panorama e-edukacji w Polsce*, ed. B. Galwas, Warszawa 2020, p. 120.

[5] D. Dudek, *Perspektywy rozwoju otwartych kursów masowych w obliczu rewolucji cyfrowej w edukacji* [in:] *Wykorzystanie potencjału współczesnych technologii informacyjnych w zarządzaniu organizacjami*, eds. L. Kiełtyka, W. Jędrzejczyk, Częstochowa 2015, pp. 80–88.

[6] J. Wagner, *Kształcenie na odległość w edukacji całożyciowej*, "Dyskursy Młodych Andragogów" 2015, no. 16, pp. 163–173.

results and student satisfaction. It is equally important to examine how flexibility and accessibility affect individual learning pathways.

However, before e-learning can be considered exclusively beneficial, it is necessary to identify the challenges that this model brings. Lack of direct contact with the lecturer, technical difficulties or maintaining high quality of interaction are just some of the potential problems[7]. It is crucial to understand these challenges and develop effective strategies to overcome them.

Looking at examples of good practice in academic e-learning can provide inspiration and concrete solutions. Analysing cases in which e-learning effectively supports the teaching process allows us to draw conclusions about key success factors.

In the context of broadly understood law, academic e-learning poses new challenges. Personal data protection, copyright, ethical standards and the quality of remote teaching are areas that require special attention from legislators[8]. Adapting the law to the dynamic development of e-learning is a priority to create a legal framework that simultaneously protects the interests of education participants and supports innovation.

---

[7] M. Wawrzyniec-Romaniuk, J. Łukasiewicz-Wieleba, *Raport z badań. Zdalna edukacja kryzysowa w APS w okresie pandemii COVID-19. Edukacja hybrydowa*, Warszawa 2020, p. 4.

[8] M. Krok, *E-learning z perspektywy ochrony praw autorskich* [in:] *E-learning w kształceniu akademickim*, eds. M. Dąbrowski, M. Zając, Warszawa 2006, pp. 15–21.

The prospects for the development of academic e-learning should consider technological changes, student expectations, and potential innovations in teaching methods. The introduction of new tools, such as artificial intelligence or augmented reality, has the potential to revolutionise the learning experience[9]. Academic e-learning is a global phenomenon that transforms the way we learn and teach. Its analysis is extremely important for understanding changes in education at the academic level and adapting to new social, technological, and legal challenges.

The impact of global events on academic e-learning is a wide-ranging phenomenon, including the adoption of educational institutions, the development of technology, changes in student attitudes, and the challenges and benefits of online education.

The COVID-19 pandemic, which began in March 2020, caused the global closure of schools, universities, and other educational institutions, forcing them to adapt quickly. In this situation, e-learning has become not only an alternative, but a necessity[10].

By supporting remote learning, e-learning has enabled students to continue learning from the safety of their homes. Learning platforms, video conferencing, online materials, and interactive tools have become a daily reality for millions of learners around the world. E-learning in the era of

---

[9] S. Kuruliszvili, *Sztuczna inteligencja – nowe wyzwanie edukacyjne*, "Problemy Opiekuńczo-Wychowawcze" 2021, no. 10, pp. 28–40.

[10] M. Allo, *Is the Online Learning Good in The Midst of COVID-19 Pandemic? The Case of EFL Learners*, "Jurnal Sinestesia" 2020, vol. 10, no. 1, pp. 1–10.

the pandemic has played a key role not only in sustaining education, but also in enabling inter-university and social contact virtually[11].

During this period, e-learning has undergone a rapid evolution, adapting to new requirements. Educational institutions, teachers, and students had to adapt to remote learning, which required flexibility and innovation. New online teaching methods have been introduced, virtual interactions have been developed, and efforts have been made to ensure equal access to education for all[12].

However, e-learning in the era of the pandemic was not without its challenges. On many occasions, pupils and students had to deal with technical difficulties, the loss of direct contact with teachers, and the need to organise learning at home on their own. Moreover, educational institutions had to contend with issues related to data protection, online security, and maintaining high-quality remote learning.

In the era of the pandemic, e-learning has also become an impulse to reflect on the future of education. The increase in acceptance of remote learning has opened up a discussion about the role of e-learning in a long-term educational strategy. The added value of this period was also the need

---

[11] A. Halim, Y. Yusus, M. Yakob, *Analysis of Anxiety, Knowledge, and Beliefs Toward E-Learning During COVID-19: The Case of Science Teachers in Aceh, Indonesia*, "The New Educational Review" 2021, no. 64, pp. 111–121.

[12] A. Kurniawati, J. Noviani, *Indonesian Students' Perception About the Effectiveness of E-Learning Implementation During COVID-19*, "The New Educational Review" 2021, no. 66, pp. 95–107.

to invest in technological infrastructure, train teachers in e-learning, and develop innovative teaching methods[13].

E-learning during the pandemic has played a key role in maintaining continued education during the emergency. At the same time, it has posed a number of challenges to the educational community that prompt reflection on the future of the ways in which knowledge and skills are transferred.

In the context of academic law, the pandemic and e-learning have confronted educational institutions with new challenges. The need to adapt to new forms of teaching required the rapid development and adaptation of legal regulations, especially those concerning the protection of personal data, copyrights, and ethical standards in the context of online education. The increase in the popularity of e-learning during the pandemic has also highlighted the need for academic law to be flexible in the face of new technologies and teaching methods. The future of academic law must consider evolving educational trends and global events that may affect the knowledge delivery model. The added value of this situation is also the increased interest in the issues of equal access to education and the protection of participants in education in the online environment.

With the current pace of change in education, e-learning platforms are becoming a key tool for the future of academic law, considering developing educational trends and global events.

---

[13] S. Rashid, S. Yadav, *Impact of COVID-19 Pandemic on Higher Education and Research*, "Indian Journal of Human Development" 2020, vol. 14, no. 2.

An e-learning platform is a combination of a website, a computer program, and a database. It is an IT system that enables the management of the educational process and acts as a repository of teaching materials. Access to it requires logging in using a special login and password, and it also functions as a means of communication between the teacher and students. E-learning platforms integrate various functions such as the placement of educational content, the management of learning, the analysis of user progress, and integration with other information systems[14]. The teacher administers the platform through the administration panel, placing e-courses on it, assigning users and assessing their level of knowledge[15].

The next step in understanding e-learning is to explain the concept of an "e-learning course". It is a didactic material containing content in the form of text, image, and multimedia, with tasks verifying the content. These courses are designed to have four main functions, including providing information, consolidating knowledge, testing knowledge and skills, and defining student activities[16]. Moreover, each course must undergo thorough certification.

In e-learning courses, as in traditional teaching, high-quality, substantively correct teaching materials adapted to the level of the group of students are important. Cours-

---

[14] P. Kopcial, *Analiza metod e-learningowych stosowanych w kształceniu osób dorosłych*, "Zeszyty Naukowe Warszawskiej Wyższej Szkoły Informatyki" 2013, no. 9, pp. 79–99.

[15] G. Penkowska, *Meandry e-learningu*, Warszawa 2010, p. 109.

[16] K. Tuczyński, *Kryteria jakości kursów e-learningowych*, "Edukacja – Technika – Informatyka" 2017, vol. 8, no. 4, pp. 341–346.

es must also meet the criteria for methodological assessment, e.g., have a system for controlling student achievement, be free of formatting errors, and display illustrations correctly. These requirements highlight the high amount of work required from course creators. Properly prepared and certified e-learning courses are placed on a specially designed platform.

It is also worth noting that legal regulations play an important role in the context of e-learning courses. Compliance with applicable legal regulations is essential to ensure the safety of participants and the quality of learning. Regular updates and adapting courses to changing legal requirements are crucial for their effectiveness and compliance with applicable standards.

Selected Legal Regulations in the Context of On-Line Courses

The legal regulations for e-learning courses cover various aspects, including copyright[17], personal data protection, and general standards related to online education. The following is a broad overview of these issues:

a) Moral Rights

In the context of creating an e-learning course in academic education, moral rights, as defined in Article 16 of the Act on Copyright and Related Rights, cover key aspects.

---

[17] A. Chorążewska, *Konstytucyjne prawa osobiste i majątkowe twórców nauki de lege lata i de lege ferenda. Zagadnienia konstrukcyjne w kontekście uniwersalnego systemu ochrony praw człowieka*, "Przegląd Prawa Konstytucyjnego" 2022, vol. 67, no. 3.

The creator of an e-learning course has the right to consider it as his own work, and his name or pseudonym should be unambiguously associated with the course, which allows for unambiguous identification of the author. The decision to identify the course by name, pseudonym, or leave it anonymous is at the discretion of the author, giving him full freedom to reveal his identity.

The author of an e-learning course has the right to the inviolability of the content and form of his work, which means that unauthorised modifications or changes are prohibited and the integrity of the course should be maintained. The right to decide whether or not to make a course available to the public for the first time allows the author to control when and how his work will be available to a wider audience, including the choice of platform, date, and form of presentation.

The creator of an e-learning course also retains the right to oversee the way in which their work is used, taking control of the copying, distribution, and access of the course by various entities. The preservation of these moral rights is crucial for respect for creativity and fair use of works in academia, especially in the context of e-learning courses[18].

b) Economic Rights

In the context of creating an e-learning course at a university, economic copyrights, under Article 17 of the Act on Copyright and Related Rights, play a key role in regulating various aspects of the exploitation of a work. A teacher or university employee who is the creator of an e-learning

[18] M. Krok, *E-learning z perspektywy…*, pp. 15–21.

course has the exclusive right to decide how to use the work. It has the ability to customise content, determine the form of presentation of materials, and make decisions about access to the course on the university's learning platform.

Moreover, the course's author has the exclusive right to dispose of the work in all fields of exploitation[19]. This includes managing distribution, placement on the e-learning platform, organisation of lectures or online seminars, and other forms of course use within the university.

Regarding remuneration for the use of a work, HEIs are obliged to provide adequate remuneration for the teacher creating the course. This may include negotiating a compensation contract, considering criteria such as the number of users, access time, and other relevant aspects.

The teacher also has the right to decide on the business model related to e-learning courses at the university. It can set access fees, decide whether to make it available to university students for free, or introduce various forms of payment, such as subscriptions or one-time fees.

Proprietary copyrights also guarantee protection against unauthorised use of the e-learning course by other units at the university. The university must respect the teacher's copyright and obtain permission before using the course for educational purposes.

Moreover, the teacher has the right to place restrictions on use, such as time limits on access, the number of users or the way in which the content is used. It can introduce various restrictions following the university's educational objectives and strategy. In this way, economic copyrights allow

[19] *Ibidem*, pp. 15–21.

teachers at the university to effectively manage and control the exploitation of their e-learning courses[20].

c) Protection of Personal Data

In the context of e-learning courses, compliance with the General Data Protection Rules (RODO) covers a number of key issues. Course providers must apply the principles of clarity, legality, and fairness to the processing of student data. Participants should be fully informed about the purpose of the processing of their data, the retention period, and the data controller. In the case of processing personal data, it is necessary to obtain the consent of the participants before using the learning platform.

Under the RODO, appropriate data security measures must also be in place to protect against loss, unauthorised access or accidental disclosure of participants' information. Students should have the right to access and correct their data, and to transfer it between different learning platforms. Moreover, they have the right to have their data erased if there are no longer grounds for processing it[21].

It is also important to comply with the limitations of tools for monitoring participants' activities, such as cookies or behaviour analysis, under the RODO principles. E-learning course providers should educate participants about

---

[20] D. Górska, *E-learning in Higher Education*, "The Person and the Challenges" 2016, no. 6, pp. 35–43.

[21] J. Jakieła, J. Wójcik, *Przegląd problemów bezpieczeństwa informacji oraz prywatności w akademickim nauczaniu na odległość*, "Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach" 2018, no. 355, pp. 31–44.

the RODO principles, their rights, and how to protect privacy. Ensuring compliance with the RODO is not only a matter of complying with the law, but also of caring for the trust of participants and protecting their privacy.

d) Course Certification

Adapting an e-learning course to the quality requirements requires a significant amount of work from academic teachers. It is crucial that the teaching materials are of high quality, substantively correct and adapted to the subject objectives. Each course should also include materials tailored to the level of the student group.

A properly structured course must meet many substantive requirements, such as the measurability of objectives, the link between objectives and learning outcomes, the combination of theoretical knowledge with practical skills, the relevance of the content to the objectives of the course, and the timeliness of teaching materials. Moreover, the course must be understandable to the target group, which includes precise instructions for tasks, unambiguous evaluation criteria, and consistency and readability of the texts and graphics used.

In the context of methodological evaluation, courses must meet criteria, such as the division of content into thematic blocks, various methods of knowledge testing, the readability of graphics and multimedia elements, and the possibility of interaction between participants and the teacher. Courses must also be adapted to different forms of contact, plan interactions that stimulate collaboration, and be accessible to people with different types of disabilities.

Moreover, courses should be evaluated for the introduction of additional materials for interested parties, the planning

of collaborative interactions, the possibility of a variety of forms of contact, the adaptation of materials for the visually impaired, and the adaptation for the hearing-impaired persons. All of these criteria are crucial for obtaining certification and successfully delivering courses in the classroom.

Conclusion

Academic e-learning has brought a revolution to education by offering flexibility, accessibility, and personalisation of learning. However, the flourishing of this form of teaching brings with it numerous legal challenges, such as personal data protection, copyright, ethical standards, and the quality of online teaching.

In the context of the pandemic, e-learning has become an inseparable tool for continuing learning, but at the same time it has revealed technical difficulties, the loss of direct contact with teachers and the need to organize learning independently.

The future of academic e-learning requires the flexibility of academic law, considering evolving trends and global events. The joint work of all participants in education is crucial for effective adaptation to the new realities of online education.

The development of academic e-learning requires considering legal, pedagogical, and ethical aspects. Academic e-learning should be effective, secure, and adapted to the diverse needs of learners, and its development should be guided by the collaborative work of all parties involved.

Literature

Allo M., *Is the Online Learning Good in The Midst of COVID-19 Pandemic? The Case of EFL Learners*, "Journal Sinestesia" 2020, vol. 10, no. 1.

Bednarczyk-Płachta A., *Prawne aspekty wprowadzania e-learningu w szkołach wyższych* [in:] *Metody i narzędzia zapisu i udostępniania danych*, eds. T. Grabiński, D. Wilk-Kołodziejczyk, M. Woźniak-Zapór, Kraków 2014.

Chorążewska A., *Konstytucyjne prawa osobiste i majątkowe twórców nauki de lege lata i de lege ferenda. Zagadnienia konstrukcyjne w kontekście uniwersalnego systemu ochrony praw człowieka*, „Przegląd Prawa Konstytucyjnego" 2022, vol. 67, no. 3.

Dudek D., *Perspektywy rozwoju otwartych kursów masowych w obliczu rewolucji cyfrowej w edukacji* [in:] *Wykorzystanie potencjału współczesnych technologii informacyjnych w zarządzaniu organizacjami*, eds. L. Kiełtyka, W. Jędrzejczyk, Częstochowa 2015.

Galbarczyk M., Kozłowski P., Krawczyk T., Pacholak A., Sidor D., Wilkin M., *Wdrażanie e-nauczania na Uniwersytecie Warszawskim – strategie, modele, efekty* [in:] *Panorama e-edukacji w Polsce*, ed. B. Galwas, Warszawa 2020.

Górska D., *E-learning in Higher Education*, "The Person and the Challenges" 2016, no. 6.

Halim A., Yusus Y., Yakob M., *Analysis of Anxiety, Knowledge, and Beliefs Toward E-Learning During COVID-19: The Case of Science Teachers in Aceh, Indonesia*, "The New Educational Review" 2021, no. 64.

Jakieła J., Wójcik J., *Przegląd problemów bezpieczeństwa informacji oraz prywatności w akademickim nauczaniu na odległość*, "Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach" 2018, no. 355.

Kopciał P., *Analiza metod e-learningowych stosowanych w kształceniu osób dorosłych*, "Zeszyty Naukowe Warszawskiej Wyższej Szkoły Informatyki" 2013, no. 9.

Krok M., *E-learning z perspektywy ochrony praw autorskich* [in:] *E-learning w kształceniu akademickim*, eds. M. Dąbrowski, M. Zając, Warszawa 2006.

Kurniawati A., Noviani J., *Indonesian Students' Perception About the Effectiveness of E-Learning Implementation During COVID-19*, "The New Educational Review" 2021, no. 66.

Kuruliszwili S., *Sztuczna inteligencja – nowe wyzwanie edukacyjne*, *Sztuczna inteligencja – nowe wyzwanie edukacyjne*, "Problemy Opiekuńczo-Wychowawcze" 2021, no. 10.

Machalska M., *Digital learning. Od e-learningu do dzielenia się wiedzą*, Warszawa 2022.

Penkowska G., *Meandry e-learningu*, Warszawa 2010.

Rashid S., Yadav S., *Impact of COVID-19 Pandemic on Higher Education and Research*, "Indian Journal of Human Development" 2020, vol. 14, no. 2.

Rudowicz-Nawrocka J., Weres J., *Rola i możliwości zdalnego nauczania w kształceniu studentów i doradztwie rolniczym na przykładzie pakietu IMARK*, "Inżynieria Rolnicza" 2005, no. 8.

Tuczyński K., *Kryteria jakości kursów e-learningowych*, "Edukacja – Technika – Informatyka" 2017, vol. 8, no. 4.

Wagner J., *Kształcenie na odległość w edukacji całożyciowej*, "Dyskursy Młodych Andragogów" 2015, no. 16.

Wawrzyniec-Romaniuk M., Łukasiewicz-Wieleba J., *Raport z badań. Zdalna edukacja kryzysowa w APS w okresie pandemii COVID-19*, Warszawa 2020.

Justyna Ciechanowska
ORCID: 0000-0002-6115-0147
University of Rzeszów

Protection of Personal Data in the Election Campaign

Introduction

General election and competition between political and social groups are the essence of modern democracies. By means of elections, the nation has a real influence on deciding on public affairs, through which it can influence social, political, and economic relations in the state.

Contemporary elections in Poland are the basic and commonly used way of legitimising the government. Through elections, representatives are appointed to perform specific functions in the elected bodies of the state. Elections are the result of the implementation of the principle of national sovereignty and can be described as the basic form of verification of the actions of the rulers by the governed[1]. Along with the referendum, they are the basic form of the nation's action in exercising power.

[1] L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2020, p. 169.

Elections – whether to the Sejm of the Republic of Poland and the Senate of the Republic of Poland, local government, the European Parliament, or the President of the Republic of Poland – are preceded by an election campaign, which is a period of great activity of politicians. This is when candidates and political parties take steps to gain support. As part of the campaign, electoral canvassing is carried out using various methods. It involves inducing or encouraging the public to vote in a certain way. It can be carried out from the moment when the competent authority is notified of the establishment of the electoral committee and under the rules, forms, and places specified in the legal provisions[2].

The election campaign begins on the day of the announcement of the date of the election and ends exactly 24 hours before the voting day, when the electoral silence is introduced. No agitation can be undertaken in such a case. Nevertheless, an election campaign is a time when personal data is processed[3].

The issue of conducting elections is regulated in the Act of 5 January 2011 – the Electoral Code (hereinafter: the Electoral Code)[4]. It precisely defines the rules for the organisation

---

[2] F. Rymarz et al., *Kodeks wyborczy. Komentarz*, Warszawa 2014, pp. 272–273; B. Michalak, A. Sokala, P. Uziębło, *Leksykon prawa wyborczego i referendalnego oraz systemów wyborczych*, Warszawa 2013, p. 17.

[3] A. Antoszewski, *Kampania wyborcza* [in:] *Leksykon politologii*, eds. A. Antoszewski, R. Herbut, Wrocław 2004, p. 152; A. Żukowski, *Systemy wyborcze: wprowadzenie*, Olsztyn 1999, p. 71; F. Rymarz et al., *Kodeks wyborczy…*, p. 271.

[4] Act of 5 January 2011 – Electoral Code, Journal of Laws of 2023, item 2408.

of elections, the manner and scope of personal data obtained from all persons involved in the election, and specifies what documents are necessary and needed to verify them.

The protection of personal data is an essential part of the whole system that guarantees fair elections for citizens. Personal data may be processed at different stages of the election and by different, independent administrators.

During an election campaign, ordinary personal data and special categories of data, e.g., revealing political or philosophical views, are processed. Candidates, their committees, and other entities involved in the collection and use of data in connection with the election campaign are obliged to comply with electoral law and data protection laws. Therefore, it is necessary to consider not only the provisions governing the conduct of the election campaign itself, but also the provisions defining the principles of personal data protection, which can be found in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, hereinafter referred to as RODO)[5].

This paper aims to present the issue of personal data protection during the election campaign, to determine who is

[5] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), EU L 119/1.

the administrator of personal data, to indicate what obligations he must fulfil, and how to conduct agitation activities with respect for the principles of personal data protection, indicating what rights voters are entitled to.

Data Administrator in an Election Campaign

The election campaign, next to the act of voting and announcing the results of the election, is one of the most important elements of general elections. It is a guarantee of the principle of freedom of choice. During the election, individual groups and candidates try to gain the support of as many voters as possible using the means and possibilities at their disposal. For voters, on the other hand, the campaign is a time when they can learn about the programmes and candidates running in the elections[6].
Therefore, during an election campaign, the personal data of candidates, voters, election commissioners, election agents, financial agents, election officials, or volunteers involved in election activities is processed.

According to Article 4(2) of the RODO, processing means an operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or

[6] A. Rakowska, *Prawna regulacja kampanii wyborczej w Internecie*, Warszawa 2012, p. 4; M. Chmaj, *Prawo wyborcze w Polsce*, Warszawa 2021, pp. 122–127.

otherwise making available, alignment or combination, restriction, erasure or destruction of data[7].

Thus, the collection of documents in the election campaign, the collection of financial contributions, the collection of data as part of the election campaign, and their further sharing are related to personal data processing, for which the data administrator is responsible. It is the employee who is subject to the obligations related to processing and protecting personal data.

Under the RODO, an administrator may be a natural or legal person, a public authority, an agency, or other body, which, alone or jointly with others, determines the purposes and means of processing personal data. In a situation where the purposes and means of processing are determined by two or more entities, they are joint administrators.

Where the purposes and means of such processing are defined in EU or Member State law, e.g., in elections legislation, then EU or Member State law may also designate an administrator or specify specific criteria for designating it[8].

---

[7] W. Chomiczewski, *Komentarz do art. 4* [in:] *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz,* eds. E. Bielak-Jomaa, D. Lubasz, Warszawa 2018, pp. 186–187; P. Fajgielski, *Ochrona danych osobowych w administracji publicznej*, Warszawa 2021, pp. 70–72.

[8] P. Litwiński, P. Barta, M. Kawecki, *Komentarz do art. 4* [in:] *Rozporządzenie w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych. Komentarz*, ed. P. Litwiński, Warszawa 2018, pp. 219–220; I. Kamińska, M. Rozbicka-Ostrowska, *Prawo danych osobowych a prawo do informacji publicznej*, Warszawa 2021, pp. 75–79.

Determining who is the administrator in a given data processing process is crucial. However, it should be noted that during the election campaign, personal data is processed by various independent data administrators. When classifying data administrators in an election campaign, the criterion of the functions performed by individual entities in the election campaign and the criterion of statutory competencies granted to them and in connection with which they participate in data processing may be used. It is worth mentioning, e.g., permanent electoral bodies, i.e., the National Electoral Commission, election commissioners, the National Electoral Office, the head of the commune (mayor, president), starost, marshal of the province, and election committees.

Pursuant to Article 160(1)(2a) of the Executive Code, the National Electoral Commission is the administrator of the data of persons against whom a final court decision has been issued stating that they have lost the right to be elected. On the other hand, under Article 167 § 1 point 4 of the Penal Code, election commissioners are the administrators of the data of persons who have the right to lodge any complaints about the activities of territorial election commissions.

On the other hand, the National Electoral Office, as a data administrator, performs tasks in organisational, administrative, financial, and technical services for electoral bodies appointed in connection with the elections.

Pursuant to Article 156 § 1 of the Electoral Code, the head of the commune (mayor, president), starost, and marshal of the province shall provide the service and technical and material conditions of work of regional and territorial electoral commissions and shall perform tasks related to

the organisation and conduct of elections in the commune, district, or province, which gives them the status of administrator.

Another important issue is the introduction of the Central Register of Voters, which collects data on voters, e.g., to confirm electoral rights and prepare a list of voters in the Republic of Poland and abroad. Its aim is to increase the security of elections and streamline organising them.

By creating a single, centralised register of voters, voters were automatically assigned to the appropriate polling stations based on their place of residence. The Central Register of Voters also allows for downloading a certificate of the right to vote in each commune office in the area of Poland, not as before – only in the commune in which the voter was included in the list.

The administrator of the personal data of voters processed in the electoral roll is the relevant commune, which prepares the electoral roll based on data made available from the Central Register of Voters and is responsible for updating it.

On the other hand, pursuant to Article 18 § 4 of the Electoral Code, the Minister for Information Technology is responsible for maintaining the Central Register of Voters in the ICT system, as well as for ensuring its maintenance and development in order to carry out tasks, such as defining the rules for the security of processed data, the rules for reporting personal data breaches or ensuring accountability for actions taken on the data collected in the Central Register of Voters. In this respect, it has the status of a data administrator.

Pursuant to Article 18 § 8 of the Electoral Code, access to the Central Register of Voters is granted to commune heads,

the National Electoral Commission, and election commissioners, through the National Electoral Office, the minister responsible for information technology, the minister responsible for foreign affairs, and consuls. On the other hand, the District or Provincial Electoral Commission has access to the Register through the mayor.

Pursuant to Article 84 of the Civil Code, in elections to the Sejm and the Senate and in elections to the European Parliament in the Republic of Poland, political parties, and coalitions of political parties and elections may form electoral committees. In elections for the President of the Republic, this right is vested only in voters, and in elections to constituent bodies of local government units and in elections for mayors, political parties, and coalitions of political parties, associations and social organisations, and voters. Currently, in the Polish electoral law, electoral committees are considered an "essential component of the electoral procedure"[9]. They have the right to nominate candidates in all elections, they conduct an election campaign on an exclusive basis for the benefit of candidates, which should be understood in such a way that all organisational, financial, and agitational activities may be undertaken only with their knowledge and consent[10].

---

[9] A. Rakowska-Trela, *Kampania wyborcza w regulacji prawnej i w praktyce*, Łódź 2015, p. 142.

[10] K. Czaplicki, *Komentarz do art. 84 Kodeksu wyborczego* [in:] K. Czaplicki, B. Dauter. S. Jaworski, A. Kisielewicz, F. Rymarz, *Kodeks wyborczy. Komentarz*, LEX no. 174223.

Election committees can be described as short-term and "episodic legal entities" that are created from the date of publication of the decision to order elections and dissolved by operation of law after the elections have been held. The Electoral Code provides for two ways of dissolving an election committee.

Pursuant to Article 100 § 1 of the Electoral Code, an election committee shall be dissolved by operation of law after the lapse of 60 days from the date of acceptance of the financial statements of the election committee by the competent electoral authority or the ineffective expiry of the time limit for filing a complaint or appeal against a decision rejecting the financial statements of an election committee or issuing a ruling upholding the complaint or appeal against the decision of the competent electoral authority on the rejection of the report.

On the other hand, pursuant to Article 100 § 2 of the Penal Code, an electoral committee entitled to a subsidy is dissolved by operation of law after 6 months from the date of receipt of the subsidy.

On the other hand, pursuant to Article 100 § 3 of the Penal Code, if a protest has been lodged against the validity of an election, the validity of an election in a constituency or the validity of the election of a specific person, the election committee which registered the lists of candidates or a candidate shall not be dissolved before the court's decision becomes final.

Pursuant to the provisions of Article 101 § 3 of the Electoral Code, an electoral committee of voters shall be dissolved by operation of law if the number of persons who have formed an election committee is lower than the minimum

number required for the establishment of a given electoral committee of voters specified in the code[11].

Even though election committees are short-term entities, there is no doubt that they are data administrators, participate in personal data processing, its purposes, and methods cease, which is related to the obligation to comply with the requirements resulting from the RODO.

Administrator's Obligations Related to Processing Data in the Election Campaign

The administrator is responsible for processing data under the processing principles set out in Article 5 of the RODO, i.e., the principle of transparency, reliability and legality, the principle of purposefulness, the principle of data minimisation, the principle of data accuracy, the principle of limitation of data storage, the principle of integrity and confidentiality, and the principle of accountability[12].

It means that under Article 5(a) of the RODO, the key obligation is to ensure the lawfulness of the processing, based on which the administrator should have one of the legal bases indicated in Articles 6 and 9 of the RODO[13].

---

[11] M. Chmaj, *Prawo wyborcze*…, pp. 119–122.

[12] M. Dominiak, M. Gawroński, *Zasady przetwarzania danych osobowych* [in:] *RODO. Przewodnik ze wzorami*, ed. M. Gawroński, Warszawa 2018, p. 64; D. Lubasz, *Zmiany w zakresie ochrony danych osobowych. Porównanie przepisów, praktyczne uwagi*, Warszawa 2018, pp. 26–28.

[13] *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz*, eds. E. Bielak-Jomaa, D. Lubasz, Warszawa 2018, p. 327; P. Litwiński, P. Barta, M. Kawecki, *Komentarz do art. 5* [in:] *Rozporządzenie*

As far as electoral committees are concerned, Article 6(1)(c) of the RODO applies in situations where processing is carried out based on legal provisions. An example of such processing of personal data may be the processing by an election committee of the data of persons who have made financial contributions to it.

According to Article 132 of the Civil Code, "Financial resources (…) – may come only from payments made by Polish citizens permanently residing in the Republic of Poland (…)", which is related to the collection by the election committee of personal data enabling the identification of donors, i.e., name, surname, and place of residence of the person making the contribution.

Marking donations in such a way is the implementation of the principle of transparency in the financing of election campaigns, which derives from the connection between the principle of openness referred to in Article 11(2) of the Constitution of the Republic of Poland and the right to public information, as defined in Article 61 of the Constitution of the Republic of Poland. It is understood as transparency of sources of revenue and expenditure, and is intended to ensure transparency of the flow of funds used by committees during the election campaign.

The principle of openness generally revolves around two main issues, i.e., transparency in the sources of financing of the election campaign, and thus the prohibition of concealment of the sources of funds in this area, and transparency

---

w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych. Komentarz, ed. P. Litwiński, Warszawa 2018, p. 258.

in the spending of funds during the election campaign, and thus the obligation to disclose financial information on the activities of the committees disposing of these funds[14].

On the other hand, Article 143 § 4 of the Electoral Code indicates that the list of payments made by Polish citizens to the electoral committee of the organisation and the electoral committee of voters of the National Electoral Commission and the election commissioners shall be made available for inspection upon request, in the manner and on the terms specified in the provisions on the protection of personal data. It is related to the exercise of the right of access to personal data for data subjects, i.e., those making payments.

According to Article 15 of the RODO, the data subject has the right to request information from the administrator about the processing of his or her personal data. This is a right that applies regardless of whether the data administrator has informed the data subject about the processing at the time of data collection. If the administrator processes the data of the individual, the data holder has the right to access the data and obtain a copy of it.

Such a request should be complied with without undue delay – and in any case within one month of receipt of the request. If necessary, this deadline may be extended by a further two months due to the complexity of the request or the large number of requests. Within one month of receipt of

---

[14] K.W. Czaplicki, J. Zebranek [in:] *Kodeks wyborczy. Komentarz*, eds. B. Dauter, S.J. Jaworski, A. Kisielewicz, F. Rymarz, K.W. Czaplicki, J. Zebranek, Warszawa 2018, pp. 310–313; Judgment of the Provincial Administrative Court in Warsaw of 3 December 2020, ref. no. II SAB/Wa 376/20, LEX no. 3113710.

the request, the administrator is obliged to inform the data subject of such extension and the reasons for it.

If the applicant has submitted the request electronically, the applicant should also receive the information electronically, if possible, unless the applicant requests a different form. If the data administrator has not taken action in relation to the request of the data subject for some reason, he must immediately inform about the reasons for not taking action and about the possibility of lodging a complaint with the supervisory authority and the possibility of seeking legal protection before the court, no later than one month after receiving the request.

It should be noted that this right and the corresponding obligation may be exercised after the data has been collected, stored, used, and otherwise manipulated until the data is deleted or anonymised. The right under Article 15 of the RODO can be called the "active right to obtain information", while the right to inform exercised on the initiative of the administrator based on Articles 3 and 14 of the RODO (discussed below) is the so-called passive right to information[15].

However, it should be borne in mind that election committees also process personal data in connection with electoral canvassing, which is not specified in the Electoral Code

[15] P. Fajgielski, *Komentarz do rozporządzenia nr 2016/679 w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych)* [in:] *Ogólne rozporządzenie o ochronie danych. Ustawa o ochronie danych osobowych. Komentarz*, WPK 2022; E. Kulesza, *Ochrona danych osobowych w zatrudnieniu,* Warszawa 2020, pp. 47–50.

in terms of personal data protection. It means that if the processing of personal data by election committees for the purposes of an election campaign does not result directly from the rights indicated in the Code of Civil Procedure, the processing of such data is possible either based on the consent of the administrator, i.e., Article 6(1)(a) of the RODO, or is related to the need to demonstrate the legitimate interest of the administrator, as defined in Article 6(1)(f) of the RODO. In particular, this premise can be invoked in the case of obtaining data of potential voters from publicly available sources, i.e., telephone directories, CEIDG, KRS. On the other hand, the condition of consent is most often necessary for the processing of voters' data in connection with electoral canvassing in the form of individualised information.

One of the most commonly used forms of direct marketing is postal mail containing promotional messages, which can be unaddressed or addressed. Due to the fact that unaddressed parcels are not directed to a designated addressee, they do not contain personal data. Address mail, on the other hand, is delivered to a strictly defined group of voters, which involves the processing of personal data, which must comply with the principles of personal data protection.

In such a case, the basis for data processing is the voter's consent based on Article 6(1)(a) of the RODO, and the data subject should be informed of the right to withdraw consent at any time without affecting the lawfulness of the processing that was carried out based on consent before its withdrawal. In this case, the data administrator is also obliged to comply with the processing rules resulting from the RODO and to comply with all obligations.

The basic obligation related to the acquisition, collection, and use of personal data in connection with the conduct of an election campaign is the need for the data administrator to comply with the information obligation under Articles 13 and 14 of the RODO. He should, regardless of the source of the data, provide information that includes, e.g., the identification of the data administrator, e.g., the address of its registered office, the purposes of the processing of personal data, and the legal basis for the processing, information on the recipients of the personal data, if specific recipients can be identified, or on the existing categories of recipients, the contact details of the Data Protection Officer, if one has been appointed, information related to the transfer of personal data to the Member State third party or an international organisation, information on the period for which the personal data will be stored and, if this is not possible, the criteria for determining this period, the right to lodge a complaint with a supervisory authority, the right to request from the administrator access to the personal data relating to the data subject, rectification, erasure or restriction of processing, and the right to object to processing, about the right to data portability and the possibility of withdrawing consent to processing and automated decision-making[16].

This obligation must be fulfilled in every situation where data is processed. Examples include mailings or letters of support for candidates. Pursuant to Article 209 of the Civil

[16] E. Kulesza, *Nowe obowiązki administratorów danych osobowych w świetle RODO* [in:] *Administrator danych osobowych i inspektor ochrony danych. Pozycja prawna*, eds. T. Wyka, M.A. Mielczarek, Warszawa 2019, pp. 21–44.

Code, persons whose data are collected when creating letters of support must be provided with all the information indicated in Article 13 of the RODO at the time of collecting their data and signatures. It is important that people involved in this type of activities, e.g., volunteers, are aware of the huge responsibility that rests on them. On the other hand, data administrators are obliged to ensure an appropriate level of security of the data processed by such persons. They must ensure that they are trained, provided with the appropriate knowledge or presented with what behaviours may cause a risk of data breaches.

The RODO generally requires the transfer of certain information not only when personal data is collected directly from an individual, but also when it is obtained from other sources. In such a case, the data administrator should inform about the issues indicated in Article 14 of the RODO, e.g., the source of the data, the purpose of their processing, the rights of the persons concerned by the processing or the right to object to the processing of data for the purpose of agitation, or more precisely political marketing.

Pursuant to Article 14(5)(c) of the RODO, the information obligation does not need to be fulfilled if the collection or disclosure is expressly governed by Union law or the law of a Member State to which the administrator is subject, which provides for appropriate measures to protect the legitimate interests of the data subject[17].

The RODO does not specify how this obligation should be fulfilled, the information is to be provided in a concise,

[17] *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz*, eds. E. Bielak-Jomaa, D. Lubasz, Warszawa 2018, pp. 486, 506.

transparent, understandable, and easily accessible form, using clear and simple language. It is not required to obtain formal confirmation as to whether the data subject has been made aware of the information. On the other hand, the data administrator, following the principle of accountability expressed in Article 5(2) of the RODO, must demonstrate that he has complied with the information obligation.

Data administrators undertaking various types of activities in the election campaign are unlikely to have any problems with implementing the information obligation in terms of content, as it is precisely described in the RODO. The only thing that may arise is technical problems with how to provide this type of information.

The data administrator who processes data in the election campaign is obliged to implement appropriate technical and organisational measures to ensure the security of the processing. It should consider the state of the art, the cost of implementation, the nature, scope and purposes of the processing, and the risk to the rights and freedoms of natural persons.

In Article 32 of the RODO, the EU legislator has indicated the measures that can be used to secure data. Their catalogue is open and includes, among others, pseudonymisation and encryption of personal data, the ability to ensure the confidentiality, integrity, availability, and resilience of processing systems and services, the ability to quickly restore the availability of personal data and access to them in case of physical or technical damage, and the regular testing, measurement, and evaluation of the effectiveness of technical and organisational measures to ensure the security of processing.

Conclusion

At the same time, the election campaign is a time of intensified processing of personal data by various entities subject to different roles, competencies, and obligations under the law. Personal data in an election campaign is the data of candidates, voters, or committee representatives.

Processing these data takes place at different stages and in different contexts, although the central point and area of this data is participation in elections. Compliance with data protection rules in an election campaign is essential to protect democracy. It is also a measure that serves to maintain citizens' trust and the integrity of elections.

Nowadays, personal data and their processing force us to take new solutions to ensure their security. Personal data processing, including those that take place during an election campaign, should be carried out under the RODO. It establishes requirements, policies, and procedures for data protection and security.

It should be noted that the RODO significantly expands the catalogue of rights of data subjects, at the same time indicating the obligations of administrators, which is intended to provide comprehensive protection in data collection and processing.

This paper does not exhaust the subject, it is only an introduction to a broader debate on the subject and, above all, to undertake further detailed research.

Literature

Antoszewski A., *Kampania wyborcza* [in:] *Leksykon politologii*, eds. A. Antoszewski, R. Herbut, Wrocław 2004.

Chmaj M., *Prawo wyborcze w Polsce*, Warszawa 2021.

Czaplicki K., *Komentarz do art. 84 Kodeksu wyborczego* [in:] K. Czaplicki, B. Dauter, S. Jaworski, A. Kisielewicz, F. Rymarz, *Kodeks wyborczy. Komentarz*, LEX no. 174223.

Czaplicki K.W., Zbieranek J. [in:] *Kodeks wyborczy. Komentarz*, eds. B. Dauter, S. Jaworski, A. Kisielewicz, F. Rymarz, K.W. Czaplicki, J. Zbieranek, Warszawa 2018.

Dominiak M., Gawroński M., *Zasady przetwarzania danych osobowych* [in:] *RODO. Przewodnik ze wzorami*, ed. M. Gawroński, Warszawa 2018.

Fajgielski P., *Komentarz do rozporządzenia nr 2016/679 w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych)* [in:] *Ogólne rozporządzenie o ochronie danych. Ustawa o ochronie danych osobowych. Komentarz*, WPK 2022.

Fajgielski P., *Ochrona danych osobowych w administracji publicznej*, Warszawa 2021.

Garlicki L., *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2020.

Kamińska I., Rozbicka-Ostrowska M., *Prawo danych osobowych a prawo do informacji publicznej*, Warszawa 2021.

Kulesza E., *Nowe obowiązki administratorów danych osobowych w świetle RODO* [in:] *Administrator danych osobowych i inspektor ochrony danych. Pozycja prawna*, eds. T. Wyka, M.A. Mielczarek, Warszawa 2019.

Kulesza E., *Ochrona danych osobowych w zatrudnieniu*, Warszawa 2020.

Lubasz D., *RODO. Zmiany w zakresie ochrony danych osobowych. Porównanie przepisów, praktyczne uwagi*, Warszawa 2018.
Michalak B., Sokala A., Uziębło P., *Leksykon prawa wyborczego i referendalnego oraz systemów wyborczych*, Warszawa 2013.
Rakowska A., *Prawna regulacja kampanii wyborczej w Internecie, Fundacja Instytut Spraw Publicznych*, Warszawa 2012.
Rakowska-Trela A., *Kampania wyborcza w regulacji prawnej i w praktyce*, Łódź 2015.
RODO. Ogólne rozporządzenie o ochronie danych. Komentarz, ed. E. Bielak-Jomaa, D. Lubasz, Warszawa 2018.
Rozporządzenie w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych. Komentarz, ed. P. Litwiński, Warszawa 2018.
Rymarz F. et al., *Kodeks wyborczy. Komentarz*, Warszawa 2014.
Żukowski A., *Systemy wyborcze: wprowadzenie*, Olsztyn 1999.

Natalie Fox
ORCID ID: 0000-0002-4513-7997
Jagiellonian University

Guarantees of Fundamental Rights in the British Constitution – Remarks Against the Background of the Right to a Fair Trial and the Human Rights Act of 1998

I

Bearing in mind doctrinal distinctions, the criterion of the "fundamentality" of human rights may be formal, in which case "fundamental rights" are understood as those freedoms and rights that have been regulated in the content of the formal constitution. The United Kingdom of Great Britain and Northern Ireland (UK) is one of the few modern democratic states that does not have a codified constitution[1] – in the sense of one or more documents (acts)

[1] In the British legal doctrine, Rodney Brazier points out that it is more accurate to refer to the concept of the British Constitution with the adjective "uncodified" than "unwritten", because certain components of the Constitution in the substantive sense, i.e., statute law, judicial jurisprudence or views of doctrine, including

formally endowed with the highest legal force and including the regulation of at least the principles of the political system. Therefore, in the UK, we are dealing with the lack of a single, comprehensive written constitution characterised by superior power. Thus, the concept of the British Constitution in the substantive sense consists of rules of different provenance, which are divided into two categories, i.e., legal and non-legal norms (legal and non-legal rules). Within the former, it is necessary to distinguish the mentioned acts of statutory law (statute law), which from the formal point of view are acts passed by the bicameral British Parliament, i.e., the House of Commons and the House of Lords, and requiring the so-called royal sanction to be valid. Moreover, legal norms in the United Kingdom include common law and principles formulated by case law and judicial practice of applying the law, as well as certain court decisions (case-law). On the other hand, the latter, i.e., extra-legal norms, include non-legal constitutional norms, which, being peculiarities inherent in the British system, are an expression of political morality. Understood as repeated and observed, the rules of established political practice determine the manner in which His Majesty's Government operates and the exercise of royal powers resulting from royal prerogatives, as

---

significant British constitutionalists, such as A.V. Dicey, Sir W.I. Jennings, and W. Blackstone, are all written, but they have not been codified in one or more legal acts, which would be given a higher legal force than the other sources of the British Constitution. R. Brazier, *Constitutional Reform: Reshaping the British Political System*, Oxford 2008, pp. 154–155; E.M. Barendt, *An Introduction to Constitutional Law*, Oxford 1998, p. 8.

well as regulate the manner in which state authorities are liable. Albert Venn Dicey, a classic of British constitutional thought, understood by constitutional convention norms "maxims or practices which, although they regulate the conduct of the Crown, ministers, and other persons subject to the Constitution, are not, strictly speaking, law"[2]. Coexisting with other constitutional norms, they are characterised by an extra-legal and informal character, regulating systemic issues belonging to the area of constitutional matters. Constitutional conventions are not the result of a legislative or judicial process, but a universally and generally recognised form of spontaneous political subordination[3]. Moreover, the supreme constitutional principles of the system should also be distinguished within the extra-legal norms, particularly the fundamental principle of the supremacy of the British Parliament (the doctrine of parliamentary sovereignty), the principle of the rule of law and the principle of separation of powers. In the context of the discussed issue, it should also be emphasised that during the period of the UK's membership in the European Union (EU), EU legislation was also recognised as a component of the British constitution, and thus the entire *acquis communautaire*. From 1973 to 2020, the United Kingdom was a member of the European Union (then the European Communities). The implementation of EU legal norms into the British legal system was carried out in a special parliamentary procedure requiring primary

[2] A.V. Dicey, *Introduction to the Study of Law of the Constitution*, Indianapolis 1982, p. 277.

[3] G. Marshall, *What are Constitutional Conventions?*, "Parliamentary Affairs" 1985, vol. 38, no. 1, p. 39.

legislation to be effective. The Westminster adopted two implementing acts, i.e., the European Community Act of 1972 and the European Union Act of 2011. Both the adoption of the ECA 1972 and the EUA 2011 were the result of the UK's entrenched principle of dualism in the field of treaty law, which means that the British legal system is treated as consisting of two components. It is recognised that if, in addition to acts adopted by national authorities, international agreements and other acts (including those originating from bodies of international organisations) are to apply, then in accordance with the doctrine of Parliament's sovereignty, acts of international law must be appropriately transformed into acts of national law. Thus, there is a need to apply appropriate procedures transforming the norms of international law into the British legal order[4]. Thus, the mentioned implementation acts set the legal framework for the UK's membership in the EU structures and were included in the bloc of the so-called constitutional acts[5]. Since January 31, 2020, i.e., the end of the formal procedure for the United Kingdom's withdrawal from the European Union (the so-called Brexit), EU law has officially ceased to be the source of the British substantive Constitution.

In the British political system, the definition of the fundamental rights and freedoms of the individual in a single legal act has never been a necessary prerequisite for ensuring an adequate guarantee of their protection. In the absence

---

[4] N. Fox, *Brytyjskie prawo konstytucyjna a członkostwo w Unii Europejskiej*, Warszawa 2023, pp. 71–76.

[5] *Thoburn v. Sunderland City Council* [2002] EWHC 195 (Admin), per Lord Justice Sir John Laws, paragraph 62.

of a codified constitution, the rights and freedoms of the individual in the United Kingdom have been largely based on common law case-law, and only occasionally on laws passed by Parliament, without the need to regulate them under a special legislative procedure[6]. It was due to the prevailing sceptical approach to the idea of a positive catalogue of individual freedoms and rights[7]. In the British judiciary, there is a well-established view that the creation of a positive international legal catalogue would be an artificial, in a sense unnatural. After all, in the UK, the sphere of freedom and individual rights was shaped in practice, and therefore should be defined in a negative way[8]. Thus, the protection resulting from the common law focused primarily on the so-called residual concept of rights and freedoms, according to which the sphere not regulated by common law constituted these

---

[6] A. Kavanagh, *Constitutional Review Under the UK Human Rights Act*, Cambridge 2009, p. 3. Parliamentary acts specify what the public authority may not do with regard to the position of the individual, thus confirming his many freedoms, rather than positively defining what they are supposed to consist in. In the UK, a statutory "declaration of rights" was not necessary because the rights of the individual were and are protected under common law.

[7] In the British system, there is no tradition of a separate codification of individual rights, because, for example, the notion of freedom as something self-evident, attributed to everyone, regardless of whether any law regulates it, has never raised doubts.

[8] The rights and freedoms in the UK are listed mainly from the negative side, i.e., "what is not allowed", namely in the British system the so-called negative catalogue of freedoms and individual rights is created.

freedoms and rights[9]. For a long time, the status of the individual in the United Kingdom has generally been governed only by common law, with the idea of the individual's inherent rights being upheld by the Parliament of Westminster. The origins of this idea can be traced back to the Magna Carta Libertatum of 1215[10]. The legal norms (rules) governing the constitutional status of an individual result primarily from numerous precedent-setting rulings of common courts. To a much lesser extent, they are derived from statutory legislation, such as the Declaration of Rights of 1689, numerous Habeas Corpus Acts, Suffrage Acts, Race Relations Acts, and the Equality Acts of 2006 and 2010. However, statutory regulations on rights and freedoms within the residual concept are incidental and partial. Moreover, the alleged nature of civil liberties does not allow for a full catalogue of them. The British doctrine of constitutional law mentions, among others, personal inviolability, freedom of conscience and religion, freedom of movement and choice of place of residence, inviolability of property, freedom of expression in all its manifestations, freedom of assembly and association,

---

[9] A. Bisztyga, *Oddziaływanie Europejskiej Konwencji Praw Człowieka na porządek prawny Zjednoczonego Królestwa*, Katowice 2008, pp. 26–27. The residual nature of rights and freedoms means that any interference in the sphere of an individual's rights by the authorities or state officials is permissible only if it has a clear legal basis.

[10] There are 3 chapters in force, including Article 29, which contains the basic guarantees of personal liberty in the form of a prohibition of unlawful deprivation of it and the imposition of any penalties without a legal basis or a court order.

freedom from discrimination, the right of access to public information, and the right to the protection of private life. In the jurisprudence of the British courts, the concept of fundamental or constitutional rights rooted in common law has been created, which are to be subject to special protection. Among the rights and freedoms included by judges in this category are: the right to life, the right to participate in democratic procedures, the principle of equality before the law, freedom of expression, freedom of religion, certain procedural rights, e.g., the right to refuse to testify and the prohibition of self-incrimination, particularly, the right to a fair trial. The jurisprudence of the British courts recognises that the exceptional importance of fundamental rights requires courts to interpret the law in a way to prevent them from being breached. It means that if the statute's wording is not unambiguous, its provisions should be interpreted by the courts with the assumption that the legislator's intention was not to violate any of the rights considered fundamental. In this way, those rights and freedoms the courts include in this category enjoy special and enhanced protection.

II

Nowadays, it is possible to observe a certain tendency towards gradual strengthening the constitutional status of the individual as a manifestation of the European standard. The scope of individual rights and freedoms in the United Kingdom is determined mainly by the international conventions to which the United Kingdom is a party, particularly the European Convention on Human Rights (ECHR), ratified by the United Kingdom in 1951. Moreover, until

the moment of the official withdrawal of the UK from the EU (i.e., the so-called Brexit), and then the related transition period, when EU law was formally still in force, the Charter of Fundamental Rights of the EU (EU Charter), the application of which was ensured by the Treaty on European Union (TEU), which was in force at the time, was also significant.

The enactment of the Human Rights Act of 1998, which incorporated the ECHR, was therefore important in the context of the discussed issue. The UK officially signed the Rome Convention on September 23, 1950, which entered into force on November 4, 1950, and was the first signatory state to ratify the agreement on February 22, 1951. However, the incorporation of the Convention into the British legal order did not take place until 2000, as the UK opposed any attempts to establish an international judicial body, i.e., the European Court of Human Rights and a complaint system. In the British system, a model in which allegations of violations would be resolved through diplomatic and political channels was much preferred, while the juridisation of human rights was inadvisable. The accession of the UK to the ECHR meant the acceptance of three issues, i.e., first, the binding force of the treaty (the Convention), secondly, the establishment of a European court of human rights and, thirdly, the establishment of the institution of individual complaints. Since the convention rules did not automatically become part of UK legislation, they could not initially form the basis of national judicial decisions. The recognition of the right of an individual to an individual complaint and the jurisdiction of the European Court of Human Rights (ECtHR) took place in 1966. It was not until 16 years after the signing of the Convention that His Majesty's Government recognised the right

of all individuals under its jurisdiction to bring an individual complaint before the Court of Justice of the European Union (CJEU) in Strasbourg (then the European Court of Justice – ECJ). However, the decision to recognise the right to an individual complaint did not mean that the Convention was incorporated into the internal legal order of the UK, but it did have certain consequences in the area of the judiciary[11].

Most rights and freedoms protected by the European Convention were incorporated into the legal order of the UK by virtue of the Human Rights Act of 1998, which entered into force in 2000. HRA 1998 is the first in the history of the British political system to be a positivised catalogue of individual rights and freedoms subject to legal protection. It has been given the status of a law of constitutional rank, both in doctrine and in case law[12]. Formally, there was no legal obligation to incorporate the Convention into British domestic law. Moreover, the UK strongly emphasised that the proper guarantee of the protection of human rights in British constitutional law is possible despite the lack of implementation of the convention norms. However, under this Act, the British courts have been given the right to interpret the statutes in accordance with the Convention. Where there is any ambiguity in national laws or legal uncertainty,

[11] The first practical use of the ECHR by a British court did not occur until 1973, in *R v. Miah*, "Weekly Law Reports" 1974, p. 683.

[12] S. Gardbaum, *The New Commonwealth Model of Constitutionalism: Theory and Practice*, Cambridge 2013, p. 160; *R v. Secretary of State for the Home Department, ex parte Bugdaycay* [1987] AC 514, 532, per Lord Bridge.

the UK courts may have recourse to the ECHR as an auxiliary means of interpretation[13].

Against this background, it should be noted that British constitutional law on human rights has undergone a radical transformation in recent decades as a result of the enactment of the HRA 1998. Under Article 1(1) of the HRA 1998, the fundamental rights and freedoms listed in Articles 2 to 12 of the Convention and Article 14 of the Convention, Articles 1 to 3 of the First Additional Protocol, and Article 1 of the Thirteenth Protocol, i.e., the right to life, have been incorporated; freedom from torture, slavery, and forced labour; the right to liberty and security of person; the prohibition of punishment without a legal basis; the right to respect for private and family life; freedom of thought, conscience, and religion; freedom of expression; freedom of assembly and association; the right to education; the right to free elections; the prohibition of the death penalty, and, particular, Article 6 of the ECHR reaffirmed the right to a fair trial. Importantly, it should be emphasised that many rights and freedoms protected by the provisions of the Convention, incorporated into the British legal system based on the HRA 1998, have already been identified by the courts based on common law. Nevertheless, the rights and freedoms incorporated in the HRA have become the standard for assessing not only the actions of the Government of His Majesty and other public authorities (government branches), but also the acts of the British Parliament. For the first time

[13] A.W. Bradley, K.D. Ewing, *Constitutional and Administrative Law*, Harlow 2003, p. 97.

in the UK, the courts had been empowered to assess laws in terms of their compatibility with the convention norms transposed into the UK legal order under the Human Rights Act of 1998.

In case of a violation of the rights of the Convention, citizens of the United Kingdom are entitled to the remedies naturally provided for in the ECHR. Under Article 6(1) of the HRA 1998, acts by public authorities leading to a breach of any of the Convention rights are, in principle, unlawful. It means that an allegation of infringement of one of these rights may be the basis for a complaint against administrative decisions under judicial review. Section 3(1) of the HRA 1998 requires that acts and delegated or secondary legislation be interpreted, as far as possible, in a way to ensure that they are compatible with the incorporated convention rights. When such an interpretation is not possible, the Act allows selected courts to issue a declaration of incompatibility, which signals the need to adapt the applicable provisions to the judicial interpretation of the rights and freedoms protected under the HRA[14].

The significance of the Human Rights Act of 1998 does not lie in the enlargement of the scope of subjective rights, but in the introduction of a new model of regulation of the constitutional status of the individual in British constitutionalism in the form of a catalogue of civil rights positivised in the rank of statutory provisions. With the entry into force of the Act, the residual concept was not completely rejected – it was only supplemented with an alternative

[14] N. Fox, *Brytyjskie prawo…*, p. 206.

model for determining the constitutional status of an individual. The rights and freedoms included in the HRA are a reference point for courts when interpreting laws and delegated legislation – judges are able to interpret these rights authoritatively and thus determine their content in a positive way. It prohibits public authorities from infringing on these rights and directs the interpretation and application of UK laws under the rights set out in the Convention[15]. If UK legislation is incompatible with it, it will be up to the Parliament to amend it accordingly. A decision by a UK court contrary to the rights contained in the HRA 1998, although otherwise, under UK law, opens the way to an appeal and the higher courts have been empowered to issue the mentioned declaration of non-compliance. In such a situation, the minister responsible for the ministry may issue a "protective order" (abolishing or correcting a provision of British law), which opens up the possibility for the court of second instance to issue a ruling under the provisions of the Convention. As an aside, it should be noted that the HRA does provide for the possibility of the British Parliament scrutinising such orders issued by His Majesty's Ministers.

The important role played by both the Human Rights Act and the Convention itself in the protection of human rights remains the subject of much controversy. As D. Irvine points out, there is no doubt that the Human Rights Act, which reinvigorated the rule of law, breathed new life into the relationship between Westminster, the Government, and the judiciary, so that all three segments of state power could work

[15] A. Bisztyga, *Oddziaływanie Europejskiej*…, p. 91.

together to ensure that a culture of respect for human rights was deeply rooted in British society as a whole[16].

III

Within the European Union itself, the idea of developing a separate document regulating human rights issues was born only at the end of the 1990s, despite the fact that the EU's accession to the ECHR based on the Lisbon Treaty[17] appeared as an attempt to remedy this situation. In 1973, the United Kingdom of Great Britain and Northern Ireland became a member state of the EU (then the European Communities). Based on Article 6 TEU, the Charter of Fundamental Rights of the European Union (EU Charter) has been granted the same binding force as the Treaties[18], which reaffirms in Article 47 the "right to an effective remedy and to a fair trial". Importantly, based on the mentioned regulations, an individual may invoke this right directly. Therefore, there is no need for a separate clarification in EU or national law. Moreover, EU Member States are required to take the measures necessary to ensure that citizens are effectively protected by legal protection in matters covered by EU law.

From the moment the Charter was proclaimed in December 2000 in Nice until the entry into force of the Treaty of

---

[16] D. Irvine, *Human Rights, Constitutional Law and the Development of the English Legal System. Selected Essays*, Oxford–Portland–Oregon 2003, p. 132.

[17] Article 6(2) TEU.

[18] The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

Lisbon, it was only a political document. However, in the context of British membership in the EU structures, the adoption of the EU Charter, which is a binding source of primary EU law and defines a catalogue of individual rights and freedoms, was significant for the increased protection of rights. The drafting and proclamation of the CFR coincided with the entry into force of the HRA 1998. In a formal and legal sense, the Charter ultimately took effect in British domestic law under the European Community Act of 1972 (ECA), although the Charter initially expressed some scepticism as to the legitimacy of its introduction into national legislation, which resulted in a lively debate in British legal scholarship.

At the time when the ECFR was proclaimed in Nice (December 7, 2000), it was not yet binding and did not of itself create the protection of fundamental rights at EU level, but was designed in a way it could become binding in the future, the granting of which had already been challenged by the United Kingdom at that stage. Despite the opposition expressed, the legal status of the Charter was strengthened by the Lisbon Treaty in 2009. The Treaty did not incorporate the Charter into the main EU Treaties, but instead, by an external reference in Article 6(1), sentence 1, *in fine*, TEU, stated that the Charter had acquired the same legal force as the EU Treaties, forming an immanent part of the *acquis* as a separate document. Moreover, it reiterated some of the key legal aspects of the Charter, namely that its provisions do not in any way extend or create new competencies for the Union as set out in the Treaties[19]. Article 51(1) of the Charter applies to the EU institutions, bodies, offices, and agencies

[19] Article 6(1)(2) TEU.

under the principle of subsidiarity, as well as to the Member States, but only to the extent that they are implementing EU law. As Mirosław Wyrzykowski points out, "this regulation imposes an obligation on the states to fulfil their obligations in a way to act under the Charter and to eliminate internal provisions inconsistent (contradictory) with the Charter"[20].

In the initial stage of work on the adoption of the EU Charter in March 2000, the House of Commons was the scene of particularly intense debates between representatives of His Majesty's Government and MPs on the British position on the draft Charter. The subject of the discussion was focused on two views presented at that time. The first was that the Charter should have a "mandatory" legal effect and thus could not be seen as merely a "solemn proclamation". The second view defended the position that the Charter should take the form of a political statement rather than a legal text to be incorporated into the Treaties. The UK Government has strongly emphasised that the Charter can make existing rights clearer and more accessible by identifying and complementing existing legal instruments on fundamental rights[21]. In the end, both the UK Parliament and

[20] M. Wyrzykowski, *Wiele hałasu o nic? Racjonalizowanie irracjonalności na przykładzie Protokołu polsko-brytyjskiego do Karty Praw Podstawowych UE* [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej. Księga jubileuszowa dedykowana prof. Marii Kruk-Jarosz*, eds. J. Wawrzyniak, M. Laskowska, Warszawa 2009, p. 502.

[21] V. Miller, *Human Rights in the EU: The Charter of Fundamental Rights, House of Commons Library*, Research Paper 00/32, March 20, 2000, pp. 28–30, https://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP00-32 (12.02.2024).

the government supported the joint initiative to strengthen human rights guarantees in the EU, thus accepting that the Charter would be legally binding in the future. The EU Charter of Fundamental Rights has become a document that sets out in a more accessible form many important rights that citizens already enjoy at European level[22].

It is important to note that when the EU Charter of Fundamental Rights formally became legally binding in 2009, the UK did not seek any form of special exemption from it, but sought to negotiate amendments to its general provisions, particularly the provisions on its scope and interpretation[23]. In the end, Great Britain and Poland insisted on adding a special, additional protocol to the Charter. During the discussions on specific rights, the UK (and initially Ireland and Sweden) did not want to include too broadly formulated social rights. On the other hand, Poland's reservations about the CFR concerned ideological issues. As a consequence, the negotiated Protocol (No. 30) on the application of the Charter of Fundamental Rights of the European Union to Polish and the United Kingdom (the so-called Polish-British Protocol) annexed to the Treaty of Lisbon

[22] The literature on the subject generally indicates that the Charter has a legal function, on the one hand, as a complete catalogue of fundamental rights, making it easier for individuals to invoke their infringement before the EU institutions and, on the other hand, a political function consisting in providing the Union with a declaration of rights similar to the parts of national constitutions on human rights. P. Tacik, *Przystąpienie Unii Europejskiej do Europejskiej Konwencji Praw Człowieka*, Warszawa 2017, p. 88.

[23] Articles 51 and 52 of the EU Charter.

has caused a kind of uncertainty as to the legal status of the Charter. The UK was opposed to the over-formalisation of the protection of fundamental rights at EU level for the sake of social and labour rights[24]. Despite this, Great Britain eventually joined the Polish-British Protocol, which was to guarantee the British the so-called opt-out clause in relation to the Charter.

The idea of UK withdrawing from the application of the Charter was completely rejected by the Court of Justice of the European Union. Since 2006, the CJEU has increasingly referred to the EU Charter as an additional source of interpretation regarding human rights principles, in addition to the general principles of EU law that have been derived (as regards human rights) from the ECHR and the national constitutional traditions of the Member States. The legal status of the Protocol, apart from the issue of the social rights enshrined in the Charter, was confirmed in December 2011 in the judgment in the case of N.S. and others[25]. The CJEU ruled that the Polish-British Protocol was not intended to exempt the United Kingdom from its obligation to comply with the provisions of the Charter or to prevent British courts from complying with its provisions. On the other hand, in the judgment of the Administrative Court of 7 November 2013 issued in the King's Bench Division of the High Court of England and Wales, Judge N. Mostyn in the case

[24] Included in Title IV of the ECFR.

[25] *N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [2011] C-411/10; [2011] C-493/10, paragraphs 119–120.

R (on the application of AB) v. Secretary of State for the Home Department[26], relying on the interpretation of the mentioned judgment of the CJEU in joined cases C-411/10 and C-493/10, confirmed the constitutional significance of this decision, stating that the Charter has been directly incorporated into UK national law and is therefore considered to have legally binding force. It was also emphasised that there is no legal possibility for the Polish-British Protocol to include an opt-out clause. The signing of the Polish-British Protocol did not undermine the validity of the Charter in the United Kingdom. During the period of the UK's membership of the EU, national courts were obliged to apply the Protocol, and any doubts about its interpretation should have been addressed to the CJEU, which has exclusive competence to interpret it as EU primary law. Moreover, the Protocol itself confirmed the obligation to interpret national law in conformity with the provisions of the Charter, which had to be interpreted in the light of the explanations annexed to it. However, the practical application of the Charter in the domestic legal order of the Kingdom in the initial period of its application was negligible, e.g., because the courts did not attach much importance to it. It is now emphasised in legal scholars that the ECFR ultimately provided a broader range of rights that were not explicitly defined in the ECHR or common law, or even in HRA 1998[27].

---

[26] [2013] EWHC 3453 (Admin), paragraphs 10, 14.

[27] K. Beale, *The United Kingdom without the Charter of Fundamental Rights of the European Union: Putting Down the Fog That Did Not Bark?* [in:] *Britain Alone! The Implications and Consequences of*

The problem of the legal status of the ECFR after the so-called Brexit has become particularly topical. Pursuant to Article 5(4) of the European Union (Withdrawal) Act of 2018, the Charter ceased to form part of the national legal order as of the date of the withdrawal of the Union from the EU. In the British legal doctrine, Alison Young pointed out important reasons for leaving the Charter in the British legal order despite the decision to withdraw from the EU structures (the so-called Brexit). First, she emphasised that the Charter provided special protection of rights since, unlike the HRA 1998, the ECHR and the common law rights provided an appropriate and specific framework for the interpretation of the rights contained therein. Secondly, it guaranteed better "remedies" in case of a breach of rights under the Charter, since individuals who relied on the Charter could use them to repeal provisions infringing rights under the Charter, which is not guaranteed by either the common law or the ECHR implemented under HRA 1998. Thirdly, maintaining the Charter would provide greater clarity on the extent to which human rights are protected in the UK. Fourth, the ECFR primarily ensured the protection of rights that had a stronger democratic basis than the common law (made by judges) or the ECHR[28].

---

the United Kingdom Exit from the EU, eds. P.J. Birkinshaw, A. Bondi, Alphen aan den Rijn 2016, p. 288.

[28] A. Young, *Four Reasons for Retaining the Charter Post Brexit: Part 1 – A Broader Protection of Rights*, "Oxford Human Rights Hub Blog", February 2, 2018, http://ohrh.law.ox.ac.uk/four-reasons-for-retaining-the-charter-post-brexit-part-1-a-broader-protection-of-rights (12.02.2024); *idem*, *Four Reasons for Retaining the Charter: Part 2 – Remedies*, "Oxford Human Rights Hub Blog", February 4,

IV

In conclusion, it should be stated that British constitutionalism has traditionally rejected the formula of legal guarantees of individual rights and freedoms. The constitutional competence to conclude international agreements is formally vested in the Crown. In fact, the process of negotiating their provisions, as well as the signing and ratification of agreements, is the responsibility of the Government of His Majesty acting on behalf of the Crown. Thus, *under common law*, the negotiation, signing, and ratification of treaties is a royal prerogative exercised by the prime minister in liaison with the relevant ministers. From a formal point of view, Westminster does not play a major role in concluding international agreements. However, it should be emphasised that no international agreement requiring certain actions in the area of domestic law (e.g., modification or amendment of existing legislation) to enter into force will achieve this effect without the cooperation of the Parliament[29]. The accession of the United Kingdom to the Community structures in 1973 was particularly important in the context of this issue. In this context, it is necessary to consider the need for a certain

2018, http://ohrh.law.ox.ac.uk/four-reasons-for-retaining-the-charter-part-2-remedies (12.02.2024).

[29] It was confirmed by the judiciary of the Brexit procedure, when the Government of JKM did not have an independent competence to initiate the procedure of withdrawal of the CM from the EU by officially notifying the intention to withdraw, i.e., triggering Article 50 TEU. *R (Miller) v. Secretary of State for Exiting the European* [2017] UKSC 5.

change in the way of regulating and interpreting the rights and freedoms of the individual, paying particular attention to the "internationalisation" of the standards of their protection. It is significant that in the modern sense of constitutionalism, the Constitution is approached as a guarantor of human rights. Therefore, it seems interesting to reflect on how the UK's membership of the EU has affected the British constitutional system in the context of increasing the protection of individual rights and freedoms. Firstly, one of the consequences of the EU's principle of primacy and the direct applicability of EU law is the EU's ability to create the rights and obligations of individuals, i.e., natural and legal persons (the so-called direct effect of EU law). As it seems, this circumstance is a specificity of the legal order created by EU legislation, since not only the Member States and their bodies become the addressees of the norms established by the Community institutions, but the British membership in the EU has brought a new quality enabling individuals to refer to the content of EU law. The direct effect of EU law during the accession period was particularly important in the protection of individual rights and freedoms in the UK, in a situation where national courts undertook their judicial activity with the obligation to consider also accepted international (EU) standards. The provision of systemic and procedural mechanisms to prevent undesirable – but necessary – conflicting situations against the background of the two functioning legal systems in the UK was a guarantee both for the proper application of the law by the courts and for ensuring the proper impact of EU law on the constitutional status of the individual. The axiology of transnational integration instruments resulted in the development of the principle of

universalism of human rights, which is reflected primarily in convention norms and in decisions of international bodies supervising the application of these norms in national legal systems[30]. The entry into force of the Human Rights Act of 1998 and its Convention-based, positive comprehensive catalogue of individual freedoms and rights could not be seen as an exception, but as an amendment to the British Constitution. It should also be considered that fundamental rights expressed in the European Convention on Human Rights (ECHR) and resulting "from the constitutional traditions of the Member States" are part of EU law as general principles of EU law, obliging the UK to respect them during its accession to the EU structures for more than four decades. Undoubtedly, the Charter of Fundamental Rights of the European Union (EU Charter) has also become a new point of reference for the British courts, which has posed a constitutional challenge for various reasons.

Literature

Barendt E.M., *An Introduction to Constitutional Law*, Oxford 1998.

Beale K., *The United Kingdom without the Charter of Fundamental Rights of the European Union: Putting Down the Fog That Did Not Bark?* [in:] *Britain Alone! The Implications and Consequences of the United Kingdom Exit from the EU*, eds. P.J. Birkinshaw, A. Bondi, Alphen aan den Rijn 2016.

[30] A. Williams, *Human Rights in the EU* [in:] *The Oxford Handbook of European Union*, eds. A.M. Arnull, D. Chalmers, Oxford 2017, pp. 251–253.

Bisztyga A., *Oddziaływanie Europejskiej Konwencji Praw Człowieka na porządek prawny Zjednoczonego Królestwa*, Katowice 2008.

Bradley A.W., Ewing K.D., *Constitutional and Administrative Law*, Harlow 2003.

Brazier R., *Constitutional Reform: Reshaping the British Political System*, Oxford 2008.

Craig P., *Constitution, Constitutionalism, and the European Union*, "European Law Journal" 2001, vol. 7, no. 2.

Dicey A.V., *Introduction to the Study of Law of the Constitution*, Indianapolis 1982.

Fox N., *Brytyjskie prawo konstytucyjna a członkostwo w Unii Europejskiej*, Warszawa 2023.

Gardbaum S., *The New Commonwealth Model of Constitutionalism: Theory and Practice*, Cambridge 2013.

Irvine D., *Human Rights, Constitutional Law and the Development of the English Legal System. Selected Essays*, Oxford–Portland–Oregon 2003.

Kavanagh A., *Constitutional Review Under the UK Human Rights Act*, Cambridge 2009.

Marshall G., *What are Constitutional Conventions?*, "Parliamentary Affairs" 1985, vol. 38, no. 1.

Miller V., *Human Rights in the EU: The Charter of Fundamental Rights, House of Commons Library*, Research Paper 00/32, March 20, 2000, https://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP00-32 (12.02.2024).

Tacik P., *Przystąpienie Unii Europejskiej do Europejskiej Konwencji Praw Człowieka*, Warszawa 2017.

Williams A., *Human Rights in the EU* [in:] *The Oxford Handbook of European Union*, eds. A.M. Arnull, D. Chalmers, Oxford 2017.

Wyrzykowski M., *Wiele hałasu o nic? Racjonalizowanie irracjonalności na przykładzie Protokołu polsko-brytyjskiego do*

Karty Praw Podstawowych UE [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej. Księga jubileuszowa dedykowana prof. Marii Kruk-Jarosz*, eds. J. Wawrzyniak, M. Laskowska, Warszawa 2009.

Young A., *Four Reasons for Retaining the Charter Post Brexit: Part 1 – A Broader Protection of Rights*, „Oxford Human Rights Hub Blog", February 2, 2018, http://ohrh.law.ox.ac.uk/four-reasons-for-retaining-the-charter-post-brexit-part-1-a-broader-protection-of-rights (12.02.2024).

Young A., *Four Reasons for Retaining the Charter: Part 2 – Remedies*, „Oxford Human Rights Hub Blog", February 4, 2018, http://ohrh.law.ox.ac.uk/four-reasons-for-retaining-the-charter-part-2-remedies (12.02.2024).

Tomasz Warchoł
ORCID: 0000-0002-7978-8149
University of Rzeszów

Organisational and Legal Aspects of Non-Formal Education in Primary School

Introduction

In the current dynamic time of educational changes under the influence of modern technologies, innovative solutions in educating students are being sought. Today, contemporary education must transcend the traditional boundaries of formal education and open up to novelties in alternative forms of education. One of the most innovative and popular for modern times is non-formal education. Its value is extremely important in the context of primary schools, which are a milestone in building students' basic knowledge and skills. In the case of primary schools, it is crucial not only to offer other, alternative educational paths, but also to organise all activities effectively, with respect for applicable standards and legal solutions.

The paper focuses on defining the organisational and legal aspects of the implementation of non-formal education in primary schools. From the perspective of non-formal education, the norms that regulate the functioning of this type

of education are also important. Important in the context of the discussed issue are also the difficulties that modern schools have to face, i.e., integrating non-formal education with structures developed over the years in primary education.

The main aim of the paper is to take a scientific look at the issue related to the effective functioning of non-formal education, considering the latest legal and organisational arrangements following the pedagogical theory.

The paper's content aims to clarify, better understand, and improve the effective implementation of non-formal education in primary schools. In this way, we can only try to keep up with the modern dynamics of education and technological development, adapting it to the needs of students and the demands of society.

Legal Bases of Non-Formal Education

The legal foundations of non-formal education have evolved significantly over the course of history, and have been influenced mainly by social, economic, and cultural changes.
The basic document guaranteeing the right to education is the Constitution. It provides the opportunity to educate all citizens, not only in the field of formal education, but also non-formal education, as important in the development of social and cultural competencies. It is a very important aspect of striving for equal opportunities and ensuring that every citizen develops his abilities and competencies[1].

[1] W. Stęchły, *Edukacja formalna wobec edukacji pozaformalnej i uczenia się nieformalnego*, Warszawa 2021, p. 12; T. Warchoł,

The Constitution emphasises the principle of equal access to education for all citizens. In this context, non-formal education plays an important role by eliminating barriers to access by providing alternative learning pathways[2].

The Constitution, as the basic state document, protects the rights of cultural minorities to preserve and develop their identities. Therefore, non-formal education can be a tool to support these rights by providing curricula that take cultural diversity into account[3].

It is also unprecedented that in the legal aspect of non-formal education, the presence of parents is also necessary[4]. The Constitution emphasises the state in terms of the role of parents in shaping the education of their children. The right to education also includes the right of parents to choose the form of education in which their children participate, which may be the case in non-formal education[5].

In the context of contemporary law, it is the education laws in most countries that regulate other more detailed aspects in terms of the structure of the organisation and

---

Edukacja pozaformalna wsparciem edukacji w społeczeństwie informacyjnym, "Polityka i Społeczeństwo" 2023, no. 2(21), p. 260.

[2] S. Jarosz-Żukowska, Ł. Żukowski, *Prawo do nauki i jego gwarancje* [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 632.

[3] Constitution of the Republic of Poland of 2 April 1997, Article 35.

[4] H. Babiuch, *Konstytucyjne prawa rodziców w zakresie wychowania* [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 632.

[5] Constitution of the Republic of Poland of 2 April 1997, Article 70.

the objectives of the education system. As society evolves, these laws are amended and supplemented with current needs also in the field of non-formal education[6].

In Poland, the main laws regulating education are the Law on School Education, which lays down the rules and conditions for the functioning of all types of educational institutions[7]. The act also regulates the manner of supporting traditional education through other forms of education, e.g., non-formal education.

Also important in the context of laws is the School Education Act, which introduces the principles of organisation and functioning of the school education system in Poland[8]. This law covers formal, non-formal, and informal education.

The Act on Youth extends the legal provisions of education, which regulates matters related to out-of-school education, youth science and technology laboratories, and other forms of support for children and young people.

Currently, in order to react quickly to the dynamics of social change, it is more and more common to see that it is the government that comes up with a modern educational strategy and various programmes aimed at, for example, popularising issues that concern the latest issues in the field of, for example, technological solutions or scientific

---

[6] W. Stęchły, *Edukacja formalna*…, p. 13; Act of 14 December 2016 Law on School Education (Journal of Laws of 2023, items 900, 1672, 1718, and 2005).

[7] W. Stęchły, *Edukacja formalna*…, pp. 13–16.

[8] School Education Act of 7 September 1991 (Journal of Laws of 1991, no. 95, item 425); W. Stęchły, *Edukacja formalna*…, pp. 13–16.

discoveries[9]. We are mainly talking about government programmes – specific initiatives within the framework of educational strategies that are being implemented. These may include, for example, special funds for the development of non-formal courses, grants for educational organisations or investments in infrastructure that allow for the organisation and support of non-formal education.

Currently, a major challenge for Polish law is the methods of certification and accreditation of activities carried out in the form of non-formal education, which becomes increasingly popular[10]. Therefore, it is currently a major challenge for the Polish education law.

In the area of legal regulations, finances and the role of non-governmental organisations are also important. At present, the development of non-formal education takes place mainly through grants, subsidies, and scholarship programmes, which are not sufficient for this form of education to be universally accessible. Therefore, an important role in this matter is discovered by non-governmental organisations, which should initiate programmes consisting in the creation of educational environments with the characteristics of non-formal education. It should also be noted that it is necessary for the current NGOs to amend their statute, which sometimes limits the scope and manner of their

---

[9] Ministry of Science and Higher Education, https://www.gov.pl/web/nauka/programy-i-przedsiewziecia (9.01.2024).

[10] B. Sobotka, S. Fel, I. Niewiadomska, *Walidacja kwalifikacji zawodowych nabywanych w ramach edukacji pozaformalnej na przykładzie certyfikacji VCC*, "Zagadnienia Naukoznawstwa" 2017, vol. 53, no. 1, pp. 49–64.

operation, as well as their cooperation with government institutions.

Organisation of Non-Formal Education in Primary School

Primary school is the foundation of everyone's education. Therefore, it must require careful planning, flexible adaptation to curricula and student needs, and interaction with external institutions and the local community[11]. Regarding the organisation of non-formal education in primary school, several important elements should be initiated in primary school.

The first important aspect is the definition and development of non-formal education programmes. Therefore, it is postulated that the analysis of pupils' needs should be carried out periodically to properly adapt the non-formal education programmes offered by the school to the pupils' needs and interests. It is important to define simple and clear goals that a given form of non-formal education is supposed to fulfil. In this respect, it is crucial to integrate the school's activities with external institutions to complement and adapt the offer to the needs of students. Such preparation of education is beneficial in terms of expanding the knowledge acquired in traditional formal education[12].

---

[11] E. Kochanowska, *Po co jest szkoła? Funkcje szkoły z perspektywy kandydatów do zawodu nauczyciela*, "HUMANITAS Pedagogika i Psychologia" 2020, no. 21, pp. 79–94.

[12] T. Warchoł, *Wybrane rodzaje aktywności uczniów szkoły podstawowej w edukacji pozaformalnej*, Rzeszów 2021, pp. 29–43.

It is essential in the organisation of non-formal education through primary schools to have appropriate staff and substantive support. This key aspect is very difficult to implement in the current situation of the school, as teachers with high qualifications usually take up jobs in other educational centres offering better salaries[13]. Despite financial barriers, primary schools must find people with outstanding qualifications and interests in their staff, as the organisation of non-formal education requires specialist knowledge and skills.

Accessibility and recruitment also become an important element in the organisation of non-formal education classes by primary schools.

Promotion of extracurricular activities for students among parents, students, and the local community. The diversity of the offer of extracurricular activities by primary schools should be combined with a simple and transparent admission procedure[14].

An important aspect concerning the organisation of classes in the form of non-formal education is its financing. Unfortunately, due to limited financial resources, the school does not have the money to finance such types of education from its own resources. Therefore, they must look for grants, subsidies, and other sources that will allow them to develop

---

[13] E. Gaweł-Luty, *Nauczyciel wobec współczesnej rzeczywistości społecznej* [in:] *Nauczyciel we współczesnej rzeczywistości edukacyjnej*, ed. E. Kozłowska-Świątkowska, Białystok 2021, pp. 23–38.

[14] R. Wilczyńska, *Zajęcia pozalekcyjne w szkołach podstawowych na obszarach zaniedbanych społecznie w dzielnicach wielkich miast w Polsce i Niemczech*, Doctoral dissertation, 2022, pp. 61–76.

the offer of non-formal education for their students. Within the scope of the school, it is possible to secure certain resources which, as part of additional hours, teachers may implement certain content that goes beyond the core curriculum for general education. However, this option is good for a short period, as it is not possible to have more than one hour per teacher per week in the current situation of the school[15]. The school's potential in the field of non-formal education is the current programmes, i.e., Laboratories of the Future[16], which have equipped schools with a large number of modern equipment. Therefore, the role of the primary school in the organisation of non-formal education may be to provide educational materials, resources, tools, or equipment necessary to conduct this form of classes, e.g., in other institutions or places.

An important activity in the functioning of non-formal education within the primary school is the establishment of a proper evaluation system. Its correct definition can make it possible to refine the effectiveness of non-formal education, including student performance and satisfaction. It also becomes important to introduce changes in curricula prepared for non-formal education to improve their effectiveness[17].

---

[15] M. Adamowicz, M. Kmieciński, *Finansowanie oświaty w jednostkach samorządu terytorialnego w Polsce*, "Rozprawy Społeczne" 2017, vol. 11, no. 1, pp. 68–78.

[16] GOV, https://www.gov.pl/web/laboratoria (5.01.2024).

[17] Z. Sury, *Ewaluacja w szkole – w kierunku kontroli czy wspomagania?*, "Edukacja Elementarna w Teorii i Praktyce" 2016, vol. 11, no. 2, pp. 41–56.

The last aspect in the context of the organisation of non-formal education in primary school is the cooperation between parents and the local community. Parents spend much time with their child on a daily basis, they know their interests and needs. Therefore, direct contact between parents and the school in the organisation of non-formal education is undoubtedly one of the main postulates concerning the assumption that non-formal education is carried out in primary school[18]. In this way, a comparison can be made between the observation of parents and the achievements of students. Primary schools are not able to conduct the non-formal education process on their own. Therefore, it has to cooperate with local institutions. Contemporary education has no chance to exist in isolation from local institutions, NGOs, or enterprises that can support the school's non-formal activities.

Organisational Features of Non-Formal Education

Non-formal education is based on students consciously entering experiences, exercises that cause intellectual and emotional activation, and the emergence of new behaviours, activities organised outside the curricula and lead to obtaining a registered qualification[19].

Non-formal education is one of the forms of education that allows us to support all people, not only those who are

[18] M. Buk-Cegiełka, *Specyfika współpracy szkoły z rodzicami dzieci na pierwszym etapie edukacyjnym: szanse – trudności – potrzeby*, "Studia Paedagogica Ignatiana" 2019, vol. 22, no. 1, pp. 37–50.

[19] T. Warchoł, *Wybrane rodzaje*…, p. 35.

in formal education, but also those who have long since completed it. Such an effect is mainly due to its individual features, which are not to be found in other forms of education.

Non-formal education is an interesting way in terms of flexibility, structure, and organisation. Due to the original curriculum that non-formal education should cover, it has a chance to adapt to the current needs of the changing society in a very purposeful way.

Another important feature of non-formal education is its individualisation, because it focuses on the individual needs of its participants. It can be said that it does not go beyond unnecessary content that is not of interest to its participants, but penetrates the areas of knowledge that are most important to the participants. In this way, it has a chance to adapt to the different skills, levels of knowledge, and learning style of the participant.

Non-formal education focuses on developing specific interests and passions[20]. In the case of non-formal education undertaken by primary school, it should broaden pupils' interests. Schools must design their support programmes based on the study of pupils' interests to accurately determine the subject matter of the content covered in non-formal education classes[21]. It will also help to avoid problems with the lack of involvement of students in non-formal education.

---

[20] A. Szlęk, *Uczyć się inaczej – nowe kompendium wiedzy na temat edukacji pozaformalnej*, Warszawa 2013, p. 12.

[21] T. Warchoł, *Wybrane rodzaje…*, p. 35.

A feature that fits in with contemporary educational needs is undoubtedly the variety of forms of teaching in non-formal education. There is no traditional approach based on the teacher conveying only theoretical content. In non-formal education, the foundation is formed by such forms as: workshops, practical projects, problem-solving activities. Meetings in non-governmental institutions, which organise practical workshops or demonstrations and didactic presentations, are also an interesting form[22].

Non-formal education is about being active and acquiring new skills through experiments and practical activities. Students taking part in this form should only gain knowledge by learning by solving problems using the tools provided by the teacher. Non-formal education is mainly based on experimentation and participation in various projects[23].

Another intriguing feature of non-formal education is the lack of formal exams and tests. In contrast to formal teaching, in non-formal education the learner does so solely to meet his own learning needs[24]. Sometimes, it happens that non-formal education requires the use of a test to obtain a certificate, but the determination of whether someone has

---

[22] I. Stalończyk, *Edukacja formalna i pozaformalna w procesie kształtowania społeczeństwa wiedzy*, "Nierówności Społeczne a Wzrost Gospodarczy" 2014, no. 37, pp. 320–327.

[23] E. Trempała, *Edukacja formalna (szkolna) i edukacja nieformalna (równoległa, nieszkolna, pozaszkolna)*, "Przegląd Pedagogiczny" 2011, no. 1, p. 96.

[24] P.E. Fordham, *Informal, Non-formal and Formal Education Programmes* [in:] *YMCA George Williams College ICE301 Lifelong Learning Unit 2*, London 1993, p. 110.

passed is carried out based on verification of practical skills and commitment[25].

The subject of non-formal education is one of the main elements of its organisation. Due to its innovative nature, its area must concern new issues that are of the greatest social interest or, in the case of pupils, subject matter that is at the forefront of topics in the primary school environment. An example is the popularity of classes related to 3D printing or programming blocks[26].

The subject of non-formal education is related to technical innovations, so it cannot be closed to innovations. As part of this form of education, it is necessary to use modern teaching methods, new technologies, and interactive tools[27]. In non-formal education, there must be an experimental approach to the topic of learning.

Innovation cannot be done without the correct guide of education, which is the teacher. In non-formal education, he acts as a mentor, a trainer who does not pass on knowledge, but gives motivation, tips, and tools to discover a new reality[28].

---

[25] A. Pogorzelska, *Zagadnienie kompetencji zawodowych w kontekście zachowań transgresyjnych – informacja z badań*, "Szkoła – Zawód – Praca" 2016, no. 12, pp. 183–185.

[26] T. Warchoł, *Wybrane rodzaje…*, pp. 29–43.

[27] K. Korniejenko, *Wykorzystanie wirtualnej rzeczywistości jako nowoczesnego narzędzia wsparcia w kształceniu inżynierów*, "Zeszyty Naukowe Wydziału Elektrotechniki i Automatyki Politechniki Gdańskiej" 2018, no. 58, pp. 37–40.

[28] H. Noga, *Modele komunikacji w procesie edukacyjnym. Na przykładzie kształcenia ogólnotechnicznego*, Kraków 2010, p. 52.

Non-formal education is focused on optimising the learning process. Therefore, it is not only about developing students' intellectual abilities, but also about optimally developing all possible aspects of the human being, i.e., the emotional and social range[29].

Non-formal education is also known as continuous education and self-education. This type of education is intended to respond to the needs of contemporary social challenges in the field of continuous lifelong learning[30].

Conclusion

To sum up, non-formal education in primary schools is a key element of students' development in the face of contemporary educational changes. It is based on constitutional values, ensuring equal access to education, and eliminating barriers through alternative education pathways. The organisation of non-formal education requires careful planning, flexibility in adapting programmes to the individual needs of pupils, and cooperation with local institutions. Its features, such as flexibility, individualisation, variety of teaching forms, and lack of formal examinations, enable it to adapt effectively to the changing needs of society. Cooperation with parents and

[29] E. Lubina, *Edukacja w społeczeństwie wiedzy wieloznaczność rzeczywistości społecznej i kulturowej*, "e-Mentor" 2006, no. 5 (17), p. 8.

[30] G. Maniak, *Kształcenie przez całe życie – idea i realizacja. Polska na tle Unii Europejskiej*, "Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach" 2015, no. 214, p. 128.

local institutions supports the effective implementation of non-formal education, shaping students as creative, competent individuals ready for continuous lifelong learning.

Literature

Adamowicz M., Kmieciński M., *Finansowanie oświaty w jednostkach samorządu terytorialnego w Polsce*, "Rozprawy Społeczne" 2017, vol. 11, no. 1.

Babiuch H., *Konstytucyjne prawa rodziców w zakresie wychowania* [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 1995.

Buk-Cegiełka M., *Specyfika współpracy szkoły z rodzicami dzieci na pierwszym etapie edukacyjnym: szanse – trudności – potrzeby*, "Studia Paedagogica Ignatiana" 2019, vol. 22, no. 1.

Fordham P.E., *Informal, Non-formal and Formal Education Programmes* [in:] *YMCA George Williams College ICE301 Lifelong Learning Unit 2*, London 1993.

Gaweł-Luty E., *Nauczyciel wobec współczesnej rzeczywistości społecznej* [in:] *Nauczyciel we współczesnej rzeczywistości edukacyjnej*, ed. E. Kozłowska-Świątkowska, Białystok 2021.

Jarosz-Żukowska S., Żukowski Ł., *Prawo do nauki i jego gwarancje* [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014.

Kochanowska E., *Po co jest szkoła? Funkcje szkoły z perspektywy kandydatów do zawodu nauczyciela*, "HUMANITAS Pedagogika i Psychologia" 2020, no. 21.

Korniejenko K., *Wykorzystanie wirtualnej rzeczywistości jako nowoczesnego narzędzia wsparcia w kształceniu inżynierów*, "Zeszyty Naukowe Wydziału Elektrotechniki i Automatyki Politechniki Gdańskiej" 2018, no. 58.

Maniak G., *Kształcenie przez całe życie – idea i realizacja. Polska na tle Unii Europejskiej*, "Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach" 2015.

Noga H., *Modele komunikacji w procesie edukacyjnym. Na przykładzie kształcenia ogólnotechnicznego*, Kraków 2010.

Pogorzelska A., *Zagadnienie kompetencji zawodowych w kontekście zachowań transgresyjnych – informacja z badan*, "Szkoła – Zawód – Praca" 2016, no. 12.

Sobotk, B., Fel S., Niewiadomska I., *Walidacja kwalifikacji zawodowych nabywanych w ramach edukacji pozaformalnej na przykładzie certyfikacji VCC*, "Zagadnienia Naukoznawstwa" 2017, vol. 53, no. 1.

Stęchły W., *Edukacja formalna wobec edukacji pozaformalnej i uczenia się nieformalnego*, Warszawa 2021.

Trempała E., *Edukacja formalna (szkolna) i edukacja nieformalna (równoległa, nieszkolna, pozaszkolna)*, "Przegląd Pedagogiczny" 2011, no. 1.

Warchoł T., *Edukacja pozaformalna wsparciem edukacji w społeczeństwie informacyjnym*, "Polityka i Społeczeństwo" 2023, no. 2(21).

Warchoł T., *Wybrane rodzaje aktywności uczniów szkoły podstawowej w edukacji pozaformalnej*, Rzeszów 2021.

Wilczyńska R., *Zajęcia pozalekcyjne w szkołach podstawowych na obszarach zaniedbanych społecznie w dzielnicach wielkich miast w Polsce i Niemczech*, Doctoral dissertation, 2022.

ISBN 978-83-8180-883-5