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The System of Constitutional Legal Rules in Poland after 1997

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Introduction

The fact that almost a quarter of a century ago formal solutions determining the transition to the democratic system were applied in Poland meant establishing new, widely demanded quality shaping the legal subjectivity of an individual. It was the result of introducing regulations setting standards typical for democracy, joining possible real influence of citizens on the political-legal reality in the state with the need of conscious participation in associated with this procedures, which were not used before. The more time passes, though, one can more clearly observe the dissonance between the legally determined means of citizen influence on the quality of governing, and the actual activity concerning this matter. It bears paradoxically amazing consequences, like the repetitive case of contesting democratically chosen authorities, whose composition is the result of socially approved attitudes and values, by significant groups of citizens. Thus, formal, system enactment of legal norms, even the ones undoubtedly right and beneficial for an individual, may bring only limited effects without wide comprehension of their meaning, and as a result their approval. From the perspective of democratic rules in power in the Republic of Poland it is more and more clearly visible that necessary, adequate in reference to the current political situation, changes in social judgments and behaviors, make a process that translates into a relatively slow evolution. The reasons for such a state of matters remain complex, though difficulty in or even unwillingness for transformations in mental sphere, shaped either directly or indirectly by the former system reality, remains the most significant of them, which results in practice of performing politics.

The above mentioned conditionings enforce the need of consistent doctrinal search and methodological solutions directed at a real change of quality of perceiving by the Polish society the mechanisms of a democratic state and the potential role of an individual in it. The message referring to this ought to comprise the function of knowledge and thinking, i.e. skillfully join information on the basic democratic institutions with the actual comprehension of their role and significance. An attempt to create a relatively simple system of constitutional legal rules, whose normative foundations will lie in the content of the regulations in the Constitution, is a suggestion heading in this direction. The meaning of completing such an undertaking ought to be also sought in didactic references, since doctrinal generalizations should not, in this case, be the value of their own.

The quality of performing power, having either direct or indirect translation into the situation of citizens, requires at the same time balanced relations between institutions and subjects. In other words, the organs of public authority ought to possess sufficiently broad competences to provide the possibility of efficient actions. On the other hand, however, citizens should be granted protection, above all of legal type, against unreasonable violation of their freedoms and rights, which nevertheless may not formally paralyze the right actions of authorities. Therefore, the already mentioned need to preserve balanced relations in this respect, since abandoning them means either significant weakening of state institutions, which as a result makes the wide space of citizen freedoms and rights illusory, or the domination of authorities leading to distortion of democratic order.

Beside the obviously most significant normative layer, the quality of performing authority in a democratic state is influenced by a number of other factors, always associated, however to various extent, with the content of legal regulations in power. Among them one may distinguish organizational conditionings that can be summarized as acceptation of the functioning in the system of organs with not entirely explicit, frequently overlapping competences. This lack of an appropriate configuration of competences may lead in particular cases to opportunistic behaviours, directed at avoiding responsibility or proving the need of existence of a given institution, rather than at actual solution of an issue. In other words, the phenomenon that can also be observed in the reality of the Polish state, may be described as a groundless, institutional multiplication, probably resulting from particular interests, not insignificant due to budget reality, in fact making the actual fulfillment of freedoms and rights, mainly of citizens, far more difficult.

Another factor affecting the quality of performing authority is a psychological one, which can be summarized as the way citizens perceive their state. The Constitution[1] states explicitly in its article 1, that the Republic is a common good of all the citizens. Yet, this normative declaration, however right objectively, does not shape the proper relations between citizens and a state on its own, but rather by numerous institutions of a state. Not taking into consideration historical reasons determining the practice of conscious, contrary attitude of at least a part of citizens towards organs of a non-sovereign state, it seems that the assessment of diligence in applying law whose content is accepted by the society is of fundamental significance.

This statement is associated, to a great extent, with yet another factor that should be signaled, i.e. personal conditionings. What is meant here, are formal and actual solutions supposed to provide professional attitude, of mainly executive subjects, since it is the positive or negative judgment of relations with them deriving from experience of individuals that translates into the state as a whole.

On the other hand, the factor of activity and rationality of behaviours is nothing else but demanded participation of citizens in typical democratic procedures, preceded, however, by pondering over the way of such participation. The passivity of a significant part of the society, shown for instance by the lack of participation of many eligible ones during elections or referenda, frequently translates into the lack of satisfaction with their outcomes, and further with the already mention opposition towards authorities.

The factor of the lack of continuity is about perceivable pursuit towards rejecting, often without any consideration, projects already in progress or planned ones by predecessors, which concerns mainly a government as a subject with principal executive competence in a state. As a result, it may contribute to creating in short time the image of the Council of Ministers as dynamically correcting the assumed mistakes of previous cabinets, while in fact it leads to wasting achievements and invested means in order to gain temporary political aims. This phenomenon may be associated with a broader issue, which prefers a party interest, constituting an agential factor of a particular way of behaviour of those in power.

The conditionings influencing the quality of performing authority that have been mentioned above as examples, originate undoubtedly from normative space. Thus, all the shortages in formal system solutions not only ought to be disapproved of, but also perceived as potential, significant threats for the way of the functioning of citizens and institutions of a democratic state.

The notion and systematics of the rules

Traditionally perceived rules as the directives of acting in particular cases, or more generally basis, foundations, basic conditions, refer to rules significantly ex-

[1] *Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Dz. U. 1997 nr 78 poz. 483.

ceeding demanded behaviours based on formal legal requirements. It results from the fact that it is not the conditioning that shapes the term which is its essence, but recommended, forbidden or permitted means of action, cessation or assessment that ought to appear in situations comprised within the rules. Values lying at the foundations of introducing legal rules allow determining them in the spheres of ethics, morality, custom, professional or legal one. As a rule, there in no distinct contradiction between, for instance, ethical or moral rules with legal ones, yet one may not exclude such cases. The rules, as one can assume, identify laws, which due to their character concern issues determined by a particular level of generality.

Acting according to the rules is not the only possible way of behaviour, and historical experience even provides the evidence that contrary attitude towards numerous rules could be to some extent the measure of eventually positively perceived development. Taking the here and now perspective one may acquire an actually wrong assumption on a statistical character of rules. The rules that nowadays seem to be unchangeable, basing on fundamental, seemingly inviolable values, may soon be regarded as anachronistic and rejected in the name of ether sublime or, on the other hand, vile ideas. The multitude of factors of cultural, civilization or religious dimension make the situation, in this respect, not entirely predictable, also since it is impossible to distinguish a stable catalogue of rules of global and all human character.

The indicated conditioning may also be referred to rules concerning organizing, putting in order particular states in political, social or economic spheres, i.e. shaping their system order. It results from the fact that there function simultaneously systems of performing power based on different premises, which as a rule are deeply rooted in traditions of these states. Arbitral judgments on the superiority of democratic mechanisms, however objectively right, do not have to justify the purposefulness of planting democratic institutions where there are no sufficient grounds for that, since the stability and permanence of such undertakings remain doubtful. The premises of political dimension cannot obscure the issue of moral or even legal conditioning of such actions, as well as their acceptable limits. Democratic orders of particular states, however to a great extent based on repetitive legal rules, are bound to differ, yet not beyond the solutions setting the boundaries of a democratic system. This conditioning has been expressed in the present Constitution of the Republic o Poland, whose foundations are by no means exceptional achievements themselves, but reflect normative and doctrinal conventions respected in the states with strongly established democratic solutions. The regulations of the fundamental law, although formally equivalent, allow due to their content to isolate the rules of differentiated degree of generality, which means unequal influence on the system order. This situation makes it possible to introduce three groups of rules, i.e. constitutional system rules, specifying detailed rules and program rules. The first o them ought to be comprehended as normative solutions shaping the bases of the functioning of a state and its institutions in a general way, yet most of all determining the subject of the supreme authority in a given state as well as the legal status of an individual. On the other hand, specifying detailed rules are constitutional rules setting the elements constructing actual quality of system rules set by a legislator. The sense of accepting the solution, according to which around significantly general rules it is possible to distinguish the rules filling them, ought to be perceived mainly in expanded dimension, namely putting the system of constitutional norms in order. Limiting the catalogue of established rules in basic measure to those originated from the normative grounds of the fundamental law creates also explicit boundaries of the considerations. However, taking into account the correctness of the message leads to the need of consistent reference to sub-constitutional regulations within the presentation of chosen issues.

When it comes to program rules, they constitute the indicator of regulations accepted in the constitution, which determine spheres of significance for the system order, yet shaping this order indirectly and not having global, complex influence upon it.

Pointing at the criterion of differentiating the rules, taking into account mainly the range of their influence on the system order, seems to be of limited importance in the system dimension. Hence, the need of searching further classification regulations for the rules enabling more comprehensible indication on relations between them in factual layer. Conclusion resulting from the analysis of constitutional norms makes it possible to determine three essential elements constructing the democratic system order, namely indicating the sovereign as the subject of supervising authority, a state as the institutional structure serving the sovereign, and the sphere of normative guarantees in favour of the sovereign as well as individual citizens or groups of citizens. It provides the grounds for introducing appropri-

ately supremacy, institution and guarantee rules. Rules comprehended in such a way, yet remaining on various levels when it comes to the range of their influence upon the system order, justify an attempt to separate the system of rules associating two above mentioned differentiating criteria. Consideration of the clarity of putting the message in order requires, as it seems, indicating first of all the system rules dominating in supremacy, institution, and guarantee layers, explicitly enough to exclude potential accusations referring to subjectivity of valuation.

The leading, however not the sole, rule in supremacy dimension is the rule of the sovereignty of the Nation, expressed in art. 4 of the Constitution, according to which the Nation, or as it is said in the preamble of the constitution the whole of Polish citizens, is the subject of the supreme authority in the Republic of Poland.

The basic system institutional rule is the rule of the division and balance of powers, expressed in art. 10 of the Constitution, which places in order the way of regimenting the governing competences between the organs of different powers as well as introducing mechanisms that consolidate the established solutions.

Eventually, the most significant guarantee rule is the rule of a democratic state of law, determined in art. 2 of the fundamental law, associating democratic system with the construction of the state of law, which determines the normative, i.e. legally guaranteed shaping relations between subjects, excluding, which is obvious, the way of acting within the spheres of freedoms individuals are entitled to.

The above directly mentioned rules ought to be perceived as the triad including the elements determining the basic rules determining citizen identity, institutional structure of a state, and additionally normatively shaped language of communication between these spheres.

The conclusion, which ought to accompany the separation of the groups of rules, taking into account the criteria of generality as well as factual, system impact, encourages to accept the mixed construction of constitutional rules.

The system and specifying rules in supremacy dimension

The rule of the sovereignty of the Nation

The leading character of the supremacy of the Nation[2] as well as explicit, constitutional indication of its formal grounds creates a seemingly simplified impression of the uncomplicated dimension of this rule. Not only did system maker determine the sovereign performing the supreme authority but also defined the normatively binding political and legal scope of this term, at the same time perceiving the opportunity of the direct realization of the governing function by the Nation within the limited catalogue of legal solutions. It is mainly expressed in the already mentioned art. 4 par. 1 of the Constitution, which states directly that the supreme authority in the Republic of Poland belongs to the Nation, identified as the whole of Polish citizens in the preamble[3]. Whereas art. 4 par. 2 (the further mentioned legal bases will concern exclusively the Constitution) expressed the possibility of direct realization by the Sovereign of governing acts, such as referendum (arts. 125, 90 par. 3 and 235 par. 6) or the citizen legislative initiative (art. 118 par. 2). The need to provide normative guarantees of the effective governing translates into indicating the representative form of performing the authoritative function, which is expressed in the above mentioned art. 4 par. 2. Therefore, one of the rules specifying the system rule of sovereignty of the Nation is the rule of representation, pointing at members of Parliament and senators as the representatives of the Sovereign (art. 104 par. 1 in reference to art. 108). Members of parliament and senators hold so called free mandate, which makes them the representatives of the whole Nation, and not merely the electorate of a particular constituency. Hence, they cannot be dismissed by the voters

[2] It is worth noting that the rule of the sovereignty of the Nation constitutes of the main matrixes of controlling the accordance of the Union treaties with the Constitution – see the *Judgment of Constitutional Tribunal of 24th November 2010*, K 32/09, ZU OTK nr 9A/2010, item 108.

[3] J. Kuciński and W.J. Wołpiuk remark accurately that the range of the authority was established by the Nation itself confirming the constitution in the referendum, which provides the rule with the character of directional directive, concreted by the norms of the Constitution – see J. Kuciński, W.J. Wołpiuk, *Zasady ustroju politycznego państwa w Konstytucji Rzeczypospolitej Polskiej z 1997 roku*, Warszawa 2012, p. 185.

while serving their term, and are not obliged to obey to their desideratums.

Other rules specifying the sovereignty of the Nation are: the rule of individual procedural participation and the rule of equal access to civil service. The first of them indicates the premise of possessing election and referendum rights. According to art. 62 Polish citizens who turn 18 not later than on the election day are entitled to these rights, excluding the ones devoid of public rights and incapacitated by final and valid decision of courts or devoid of election rights by final and valid decision of the Tribunal of State. Active election right is always a necessary element to run for election, and other detailed requirements are determined in this range on the constitutional ground (arts. 99 and 127 par. 3) or statutory.

The rule of freedom of uniting

The real influence of the Sovereign on performing the authority in a state would be marginalized to a great extent if it were not for providing citizens the possibility of uniting within legally differentiated limits, enabling them to express their activity, or more broadly expressing aims and views of particular groups and circles[4]. It is generally expressed in art. 12 including the guarantees granted by the Polish state for the right to establish and perform activity of trade unions, social and professional organizations of farmers, associations, citizen movements as well as voluntary societies and foundations. What is important, the freedom of uniting as the subjectively universal category is a significant segment of constitutional freedoms and rights. One of the previously mentioned constitutional regulations (art. 11) exposes the freedom of voluntary uniting of Polish citizens in political parties directly, which no doubt subscribes to the presented system rule, constitutes its most significant element. It is supported by two basic premises, i.e. subjective orientation, meaning the possibility of uniting in political parties of exclusively Polish citizens, as well as the influence of party activities on the quality and direction of performing the authority in the state that is the prerogative of the Sovereign. Thus, it is purposeful to determine the rule of party pluralism as a concreting rule towards the freedom of uniting. Political parties, basing on voluntary membership and equality of their members, aim at influencing the state policy with democratic methods. Parties, which due to the possesses rights have significant influence on course of elections, particularly parliamentary, cannot replace the organs of public authority though. The freedom of uniting, including party pluralism, does not imply the lack of limiting factors, which art. 13 refers to.

Other of concreting rules in the discussed area is the freedom of assembly[5] described as the subjectively universal category in art. 57. The Constitution expresses it as the possibility of organizing and participating in peaceful gatherings, with the stipulation of introducing statutory limitations in this respect, which actually has been completed.

The rule of decentralization of the public authority

Decentralization of public authority, expressed in art. 15 par. 1, guaranteed by the territorial system of the Republic of Poland enables the possibility of more numerous participation in performing power, broadening the appropriate prerogatives to representatives of self-government communities. The participation of self-government units in realization of public authority comprises, according to art. 16 par. 2, essential part of public assignments performed in one`s own name and responsibility. Administration organs functioning on the levels of territorial division, established with due respect towards social, economic and cultural conditioning, acquire the ability to administer efficiently within statutory rights, which is assumed to be fulfilled by the right for proper administration.

Besides the decentralization of public authority, which is an element of the system order of a democratic state, there is a number of solutions identifying territorial self-government presented in the Constitution, which is a completion for the directly expressed system regulation. The constitutional identification of the system of territorial self-government perceived as a specifying rule includes, amongst the others in art. 164 par. 1, the example of *gmina* as a basic self-government unit

[4] Constitutional regulations concerning this matter are elaborated in the following acts: Ustawa z dnia 7 kwietnia 1989 r. Prawo o stowarzyszeniach, Dz. U. 2015 poz. 1393, Ustawa z dnia 23 maja 1991 r. o związkach zawodowych, Dz. U. 2015 poz. 1881, Ustawa z dnia 6 kwietnia 1984 r. o fundacjach, Dz. U. 2016 poz. 40, Ustawa z dnia 27 czerwca 1997 r. o partiach politycznych, Dz. U. 2011 nr 155 poz. 924.

[5] The freedom of assembly is elaborated in Ustawa z dnia 24 lipca 2015 r. Prawo o zgromadzeniach, Dz. U. 2015 poz. 1485.

with the authorization (art. 164 par. 2) for the statutory determination of other self-government units. Moreover, units of self-government possess legal personality, the right of possession and other property rights, and the independence of self-government subjects is legally protected[6] (art. 165).

On the other hand, concreting rule of supervision, expressed in art. 171, introduces the criterion of legality as the basis for the assessment of self-government units. The supervising organs are: Prime Minister, *wojewodowie* (head state officials in districts), and in issues concerning financial matters regional chambers of finance. As a consequence of a stated infringement a constituting organ of territorial self-government may even be dissolved in case of flagrant violation of the Constitution or acts.

System and concreting rules in institutional dimension

The rule of the division of powers and balance of powers

The division and balance of powers, being the standard solution for democratic orders of particular states, has been constitutionally expressed in art. 10. Its essence can be summarized as the division of significant spheres of prerogatives between the legislative power (two-chamber parliament – Sejm and Senat), executive (President and the Council of Ministers) and judiciary (courts and tribunals). The division is assumed to prevent the functioning in a state the centre of authority with so broad prerogatives that it could potentially endanger the stability of democratic system, and as it is commonly known, the division does not favour concentration of, in this case, competences. The division is closely associated with balancing mechanisms, which are to enable the reaction of other organs in power, should any of them make illegal attempts to appropriate prerogatives it does not possess. Four concreting rules have been distinguished referring to the system rule:

- subject distinction – which basing on the basis of distinguished governing subjects of three powers expresses mainly the rules of their functioning or organizational structures, i.e. broad issues frequently mentioned only in fragments in the Constitution, thus requiring broader reference beyond the Constitution,
- functional determination – within which system location of the organs of legislative, executive and judicial powers ought to be determined (e.g. normative basis referring to the President of the Republic of Poland is expressed in art. 126),
- object hierarchy – comprising simply systematic determination of competences of organs in power, beginning with constitutional ones to the ones included in lower rank legal acts,
- inter-subject connections – concerning the dependence between organs of authority, both within particular authorities as well as in broader context (a good instance being the control function of *Sejm* towards the Council of Ministers – art. 95 par. 2)[7].

The rule of identification of common good

As mentioned before expressed in art. 1 identification of common good, the Republic of Poland, reflects the view of the system maker on a required model of the perception of a state by citizens. Additionally the care for common good that ought to be shared by Polish citizens has been pointed at amongst constitutional duties (art. 82). This shape of norms constructing relations between individuals and institutions impose on citizens the duty of minimum harmful actions towards their own state. In subjective, individual reception it ought to be associated with perceiving the role performed by organs of public authority as serving citizens, i.e. the one that enables the complete realization of freedoms and rights at the same time respecting existing duties. In other words, recognition of a state as a good by citizens is not associated with the conviction of organs creating content of norms and formal declarations referring to this, but with the way of applying socially accepted law.

[6] Various units of local self-government act on the basis of the following acts: Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, Dz. U. 2015 poz. 1515, Ustawa z dnia 5 czerwca 1995 roku o samorządzie powiatowym, Dz. U. 2015 poz. 1445, Ustawa z dnia 5 czerwca 1995 roku o samorządzie województwa, Dz. U. 2015 poz. 1392.

[7] The characteristics of art. 10 of the Constitution as well as the issues associated with the rule of the division of powers are presented by G. Kuca, *Zasada podziału władzy w Konstytucji RP z 1997 roku*, Warszawa 2014, pp. 89–126.

The rule of unity of the state

The unity of the Polish state, mentioned in art. 3, means that subjects entitled to establishing law inconsistent with the legislation of the Republic of Poland cannot, as a rule, function on the territory of the state. Such a system construction, unlike the one in federation states, in no way is in contradiction with decentralization of public authority, since acts of local law, which can be established by self-government organs, cannot be inconsistent with bills. Moreover, verification mechanisms exist in this respect. It translates completely into the situation of other than central organs of authority, obliged to respect the legal order of the state. Additionally, in chapter III of the Constitution the closed catalogue of sources of law that is commonly in force has been determined.

The rule of fundamental obligations of the state

Actions of organs of public authority in a democratic state ought to be restricted to numerous undertakings that eventually provide possibly decent existential conditions or citizens. Fulfilling this almost truism task frequently requires differentiated forms of acting depending on plenty of factors, for instance of political, economic or cultural character. The favourable attitude of state organs towards citizens, additionally guaranteed by the shape of law in power, ought to create an opportunity for complete use of individual, political, economic, social, and cultural freedoms and rights (which has been mentioned before) determined in chapter II of the Constitution. The initial point for this state of matters being, however, the achievement of general objectives by the state, referred to in art. 5. These are as follows: guarding the independence and inviolability of territory, guaranteeing freedoms and rights of human and citizen, as well as safety of citizens, protecting national heritage and the environment, taking into account the need of balanced development. It is not difficult to observe that taking full advantage of freedoms and rights is possible only in an independent, integral when it comes to its territory state, where the safety of citizens is preserved, and both national heritage and the environment are protected. It is these factors constructing the system rule of fundamental obligations of a state, that make the main, but not only ingredient creating six following concreting rules:

- the protection of statehood – comprising most of all protection of independence and inviolability of the territory, which relates to, expressed in art. 26, assignments of Armed Forces, neutral in political matters and subordinate to civilian and democratic control, with this stipulation, that the protection of the state goes far beyond the assignments of the army, including, among the others, foreign policy,
- the guarantee of freedoms and rights – referring mainly to procedures and institutions possible to put in motion in case of violations, e.g. the right for trial (art. 45), instance control (art. 78), or Ombudsman (art. 80),
- providing citizen safety – i.e. providing the state of the lack of danger of individuals or at least the state of maximal limitation of potential dangers by means of appropriate legal instruments, organizational solutions and factual activities,
- the protection of the environment – being the duty of public authorities, yet also directed at other subjects and circles, aimed at providing ecological safety currently and for the sake of future generations, realized basing on the rule of balanced development[8], while providing the common right for information on the state and protection of the environment (art. 74),
- cultural openness – meaning providing by the state the conditions for popularization and equal access to cultural goods , acknowledged as the source of identity of the Nation as well as its preserving and development, additionally providing the Poles abroad with assistance in preserving their connection with national cultural heritage (art. 6).

The rule of sovereignty of the Republic

Traditionally comprehended sovereignty of a state means its independence from other states, as well as international organizations and organs. Several articles of the fundamental law, i.e. art. 5, 26, 104, 126, 130,

[8] More broadly on the topic of the balanced development in Z. Bukowski, *Zrównoważony rozwój w systemie prawa,* Toruń 2009. The protection of the environment is regulated basically in Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska, Dz. U. 2013 poz. 1232, whereas the access to information on the environment is regulated in Ustawa z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko, Dz. U. 2016 poz. 353.

include the reference to the term of sovereignty, and identical with it when it comes to language, norms, and constitution, term of independence, which makes these articles formal bases for this system rule. Appealing to sovereignty or independence does not establish the factor excluding the option of transferring by the Polish state, on the basis of international agreement, the competences of organs of public authority to international organization or organ in particular cases, which is expressed in art. 90 par. 1[9]. However, the approval of the ratification of such an international agreement requires fulfilling particularly strict criteria (art. 90 paras. 2 and 3). One must assume, therefore, that according to the system maker a limited cession of competences for the sake of legal international subjects (however not other states) does not exclude the sovereign (independent) existence of the Republic.

System and concreting rules in the guarantee dimension

The rule of a democratic state of law

A state of law is the one, in which legal norms are of supreme value in relation to other rules of behaviour, e.g. ethical, moral, customary or religious ones. In consequence, in case of a potential conflict of legal regulations with other rules or values, it is the legal norms that have the priority. The construction of a state of law understood in such way, described in art. 2 that has been already mentioned, bears a number of consequences both institutional and individual, generally included in the requirement of functioning in the way respecting the legal order in power. Treating the rule of the state of law as the one possessing the real guarantee value is, however, possible solely in the reality of the democratic system[10], whose fundamental determinant is the sovereignty of the Nation. The following concreting rules have been distinguished for the rule of a democratic state of law:

- the primacy of the Constitution – which is expressed constitutionally by assuming that it is the supreme law of the Republic of Poland, and its regulations are to be applied directly as a rule (art. 8)[11],
- the respect towards international law – obliging the Polish state to respect this category of legal norms that is binding the Republic, i.e. accepted by the state (art. 9)[12],
- the hierarchy of the sources of law – which means determining in the fundamental law the complete catalogue of the sources of law commonly in power and pointing at the relation between them (chapter III of the Constitution),
- institutional obligations – on basis of which (art. 7) organs of public authority act on the grounds and within the limits of law, and as a result are obliged to respect the system, procedure, competence, and substantive law rules,
- equality towards law – determining the requirement

[9] Therefore K. Wojtyczek is right remarking that the sovereignty of a state ought to be comprehended nowadays not as the exclusiveness of the state competences concerning making decisions and its own matters (which was characteristic for Westphalia system), but rather as the presumption of such a competence o the state and the right to decide on repeal this presumption within a certain range – K. Wojtyczek, *Polska w europejskim systemie konstytucyjnym* [in:] *Prawo konstytucyjne*, ed. P. Samecki, Warszawa 2008, p.14.

[10] R.A. Tokarczyk states that, „*The concept of the state of law, or democratic state of law is also treated as* the *fundamental rule of the state system, or political system, as one of the supreme rule of the constitution. These rules by determining the character of the whole system o law as the normative basis of the state system, condition the content of other rules of law-particular branches of law and legal institutions. The position of the rule of democratic state of law amongst all the legal rules o the Polish legal system is therefore superior, general, main and most significant in their reference towards particular legal norms and regulations. It is the sum o all the system rules*" – see R.A. Tokarczyk, *Paradygmatyczne ujęcie koncepcyjnych i ustrojowych aspektów demokratycznego państwa prawa* [in:] *Demokratyczne państwo prawa*, ed. M. Aleksandrowicz, A. Jamróz, L. Jamróz, Białystok 2014, p. 138. This view is common among the representatives of the doctrine, which frequently refers to the mentioned principium as „the rule of the rules", while neglecting in this context the role of the rule of sovereignty of the Nation.

[11] In the doctrine three types o direct application of the Constitution are distinguished: the autonomous application, co-application of the Constitution and an act, and application as the matrix of control – see. M. Florczak-Wątor, *Applying the Constitution of the Republic of Poland in horizontal relations*, Kraków 2015, pp. 40–48.

[12] This rule is associated with the rule of interpretation favourable for the law of the European Union – more broadly I. Przybojewska, *Konstytucyjna zasada przychylności procesowi integracji europejskiej w świetle ewolucji unijnego modelu ustrojowego* [in:] *Prawo Unii Europejskiej a prawo konstytucyjne państw członkowskich*, ed. S. Dudzik, N. Półtorak, Warszawa 2013, pp. 197–212.

of equal treatment by public authorities of subjects possessing identical relevant features, which translates into the prohibition of discriminating against anybody in political, social, economic, and family life for any reason whatsoever (arts. 32, 33).

The rule of economic freedom

According to art. 20, the freedom of economic activity as a system rule makes one of essential elements of social market economy. The freedom that includes both choice and way of performing economic activity, is supposed to shape healthy, economic foundations of the democratic order. What is important, art. 22 of the fundamental law expresses the possibility of introducing restrictions in this matter. The premises that allow the restrictions are: the form of an act and considerations of a significant public interest[13], which due to its broad, even discretionary character, may lead to far fetched interference into the economic freedom.

The rule of protection of possession and inheritance

The rule of protecting possession[14] and inheritance by the Polish state, described in art. 21 par. 1, means law creating activities mainly in the area of civil and criminal law, as well as institutional activities based on them. This protection is not, however, of absolute character, since the fundamental law (art. 22 par. 2) includes the admission of expropriation for public purposes for just compensation. This issue is also referred to in art. 64, pointing at subjectively universal law of possession and inheritance, as well as other laws o property, protected equally for all subjects. Additionally, the text of the mentioned article includes statutory form for the limitation of the possession right, which cannot violate its essence, though. Despite the unambiguity of statements constructing this system rule, the quality of respecting the right of possession at the level of detailed normative solutions is arguable.

The rule of legal subjectivity

Legal subjectivity of an individual (a citizen) may be described as a position towards organs of public authority and other subjects functioning in legal relations determined mainly by constitutional freedoms and rights. The requirement of basing relations between institutions and individuals on the law in power makes them predictable, since organs of public authority are obliged to act on legal grounds and within legal limits, while individuals apart from the requirement to obey legal obligations and prohibitions are relatively free in fulfilling their freedoms and rights. What is more, according to art. 31 par. 2 no one can be obliged to do anything that is directly ordered by law.

Legal subjectivity comprehended in such a way may not, however, exist in reality without granting to an individual a number freedoms and rights from personal, political, economic, social and cultural spheres, establishing the conditions of its decent existence. The legal subjectivity, and particularly citizen subjectivity, as a system rule tightly connected with the sovereignty of the Nation, is expressed in the following concreting rules:

- constitutional form of freedoms and rights – whose essence is reflected in including a broad catalogue of freedoms and rights in the fundamental law, and in this way affecting the whole system of law as a consequence of the leading role of the Constitution within the sources of law commonly in power,
- the freedom of information – basically meaning the freedom of acquiring and disseminating information (art. 54 par. 1), which is connected with such regulations as the freedom of press and other mass media[15] (art. 14), the right of access to public information (art. 61) as well as information on the state and protection of the environment (art. 74 par. 3),

[13] The range of economic freedom and possible limitation referring to it the Constitutional Tribunal expressed its standpoint in a number of decisions, amongst them: *Judgment of Constitutional Tribunal of 25th July 2006*, P 24/05, ZU OTK nr 7A/2006, item 87, concerning the obligation to purchase electric energy from unconventional and renewable sources, *Judgment of Constitutional Tribunal of 4th July 2002,* P 12/01, ZU OTK nr 4A/2002, item 50, on the constitutional character of the regulation referring to the rule of responsibility of individuals obliged to report the request for declaring insolvency.

[14] The Constitutional Tribunal expressed its standpoint on the protection of property, e.g. in *Judgment of Constitutional Tribunal of 5th March 2002*, SK 22/00, ZU OTK nr 2A/2002, item 12, referring to constitutional character of rules determining the participation of an owner of a premises separated in common property, as well as the rules of establishing the separate ownership of a premises.

[15] More broadly A. Biłgorajski, *Granice wolności wypowiedzi. Studium konstytucyjne*, Warszawa 2013, pp. 202–211.

- educational guarantees – expressed in a subjectively universal right for education, as a rule in free public schools, with the state guarantee of common and equal access to education (art. 70),
- respecting privacy – by legal protection of private, family life, honour, reputation and ability to decide on one`s private life (art. 47), and additionally the guarantees of the freedom and protection of secrecy of communication (art. 49), inviolability of a premises (art. 50), or the right not to disclose information about oneself (art. 51),
- existential protection – including the protection of such values as life (art. 38), personal inviolability, personal freedom (art. 41), as well as the right for the protection of health (art. 68) by guaranteeing the equal access to health care financed from public means,
- the protection of family – which means the duty of a state to take into consideration the well being of family in its social and economic policy, particular assistance of public authorities for mothers before and after giving birth to a child, guaranteeing its rights as well as the rights of parents to raise their children according to their beliefs, while taking into account the subjectivity of a child (arts. 71, 72, and 48)
- the protection of labour – whose essence is to guarantee the freedom of choice and performing a profession, and the choice of a work place along with guaranteeing its safe and hygienic conditions in case of obligation of public authorities to aim at full, productive employment (arts. 65, 66),
- social security – meaning the right of citizens to social well fare in case they are unable to work due to health reasons or reaching the retirement age, and security of citizens unemployed for reasons not depending on their will (art. 67),
- the freedom of creation – including the freedom for artistic activities, scientific research, including the announcement of their results, the freedom of teaching, as well as taking advantage of the cultural goods (art. 73),
- institutional and procedural guarantees – including such solutions as the right for trial (art. 45), the assumption of innocence (art. 42 par. 3), the rule of defense (art. 42 par. 2), instance control (art. 78), partially included in the fundamental law, and extended in statutory regulations with functional and pragmatic dimension.

Program rules

Constitutional matter also creates the opportunity for separating rules not included in already determined spheres, even though playing a significant part for the legal order in a state, i.e. program rules, including the rule of control. Its essence, at least in constitutional meaning, ought to be associated with the controlling function of Sejm towards the Council of Ministers. (art. 95 par. 2) and controlling prerogatives of the Supreme Audit Office (art. 203). The controlling function of Sejm towards the government is limited in the Constitution mainly, though not exclusively, to determination of the consequences of negative assessment by the parliamentary majority (e.g. constructive vote of no confidence – art. 158). When it comes to the Supreme Audit Office[16] perceived as a leading organ of state control subordinate to Sejm (art. 202 par. 1 and 2) the range and criteria of obligatory and facultative controls have been described as well as the catalogue of submissions to Sejm (art. 204) which make it easier for this organ to assess the way of fulfilling a budget act by the government. It creates the mechanism described in art. 226, which leads to granting to the Council of Ministers the vote of acceptance or not, which makes a significant element of the above mentioned control function.

The rule of constitutional determination of public finances ought to be estimated as possessing an important guarantee value for the stability of the finances, since the Constitution points at the maximal level of the state public debt in relation to the value of annual gross domestic product (art. 216 par. 5). Moreover, constitutional regulations in this respect regulate significant issues that concern passing of a budget act, presenting potential consequences of disobeying procedures in power. Eventually art. 227 has been devoted to the National Bank of Poland as the central bank of the state.

The rule of professional self-government, expressed in art. 17, is the delegation to statutory establishing professional self-governments, representing individuals performing the professions of public trust. These self-government are supposed to care for due diligence in performing these professions with the benefit and protection for the public interest.

[16] More broadly on the role of the Supreme Audit Office R. Padrak, *Postępowanie kontrolne NIK. Komentarz*, Wrocław 2012.

On the other hand, the rule of autonomy of churches and other religious associations (art. 25) expresses such a model of their relation with the state with the emphasis on the mutual independence, as well as the need of cooperation in the interest of human well being and common well fare. Churches and other religious associations as equal subjects deserve equal treatment, and public authorities of the Republic are to guarantee opportunity for free and public expression of religious, world-view and philosophical views, at the same time being impartial towards them.

The manner these rules affect both citizens and their groups, and state and self-government institutions is diverse and differentiated, which does not imply it does not deserve prudent judgment. The above described scheme o legal rules, comprising various levels, ought not to be treated as a closed structure, on the contrary in open way, encouraging serious discussion on rules creating the manner of organizing and functioning of the state, and the position and significance of an individual.

Accepting the convention, according to which concreting detailed rules are to be in a way subordinate to broader, when it comes to content, system rules, introduces the element of some discretionary attitude, while taking into account the semantic pervasion of rules. It creates the need to make classification choices every time on the basis of possibly clear conditionings, since taking the clarity of the system into consideration settles the need to reject the repetitive, hence referring to various system rules, citing of concreting detailed rules.

The criteria of separating the rules

Pointing at the constitutional regulations as elements, whose content constitutes the determinant of forming legal rules, does not imply the existence of a homogenous creation criterion. It is relatively simple, however, to separate the dominating criterion, even referring to system, concreting rules, as well as program ones, meaning simply deriving them from singular regulations of the fundamental law. The simplicity of this unsophisticated method, as one may assume, is its main advantage. It is associated with the opportunity to match the rules with specific parts of constitutional normative matter. In consequence, the catalogue created in this way remains actually concurrent both as it comes to notion and content with the regulations of the Constitution, which limits potential doubts concerning interpretation of the norms.

The analysis of numerous constitutional regulations can be another method of creating rules, which finds the justification in, for instance, repetitive reference within them to certain rules and values. Such practice results most probably from the conviction of the system maker of the universal, and therefore advisable application of these provisions to various institutions of the constitutional character.

A particular concept of separating the rules can also be observed in an opulent jurisprudence of the Constitutional Tribunal. It is so since a number of significant, when it comes to doctrine rules, even though not being directly reflected in the content of the fundamental law, have been originated fro the rule of a democratic state of law[17]. Such a direction in the jurisprudence of the Tribunal undeniably improves the quality of institutional and unitary references resulting from the construction of a state of law. On the other hand, however, it is worth noticing doubts concerning the issue to what extent such a practice in jurisprudence is sufficiently justified by law and is adequate to the rule of the certainty of law. Conducting by the Constitutional Tribunal, even within competence authorization, assessments and analyses signing in the process of law application, does not justify the broadening interpretation of the used norms in the manner which leads to approving solutions that prescind from them. In comparison with the rule of a democratic state of law, however, it is the expression of a certain manner of the jurisprudence of the Tribunal, which due to the application of a controversial methods not only in any way enriches, but on the contrary, impoverishes the potential constructing formal bases of decisions.

In consequence doubts may appear whether the Constitutional Tribunal still fits in the formula of law application, or in an unjustified way trespasses the grounds belonging to the creator of norms[18]. However,

[17] For instance, from the rule of democratic state of law the Constitutional Tribunal derives the rules of the protection of acquired right as well as the citizen trust to the state and established law, see e.g. *Judgment of Constitutional Tribunal of 19th June 2012*, P 41/10, ZU OTK nr 6A/2012, item 65.

[18] As B. Banaszak remarks, Constitutional Tribunal creates the actual shape of the Constitution as well as the rules and norms it contains to a certain extent – see B. Banaszak, *The System of Government in Poland* [in:] *Governmental Systems of Central and Eastern European States*, ed. N. Chronowski, T. Drinóczi, T. Takács, *Governmental Systems of Central and Eastern European States*, Warszawa 2011, p. 504. In the literature the activity of the judges of Constitutional Tribunal is assessed as positive but also as negative – the review of the

regardless mentioned above controversies around the method, the effects of this jurisprudence sphere ought to be assessed in positive manner, mainly as a significant element enriching the way of perceiving constitutional freedoms, and human and citizen rights. The above statement becomes more comprehensible after referring to chosen rules derived from the rule of a democratic state of law, which amongst the others are:

- the rule of trust towards the state and law created by it,
- the rule of protection of acquired right,
- the rule of protection of interests in progress,
- the rule of obeying *vacatio legis,*
- the rule of not applying law backwards,
- the rule of particularization of regulations,
- the rule of permanence and execution of decisions,
- the rule *ne bis in idem.*

The legal solutions in power are the determinant of relations between citizens, more broadly the whole of subjects under the authority of the Republic, and state institutions. It is them that ought to stand as the factor that makes these references objective, with the presence of subjective elements, like social qualifications and professional attitude of state officials. The trust towards the state shapes mainly under the influence of experience of contact with organs of public authority, since the positive or negative reception of the way they function in is the subject to more or less conscious translation into the assessment of general dimension. Obviously, the possibility of settling a matter in satisfactory way has a direct connection with the content of a norm, assuming formal and factual correctness of proceeding[19]. In this context the quality of existing law is of significance, thus also its unambiguity, possible simplicity, clarity that may lead to a unitary or even broader social approval of formal solutions. Taking into account these, not that exaggerated criteria, already at the legislation stage would allow creating clear, transparent relations in the process of applying law. The certainty of law, which means not only its stability but also predictability and reason while making alterations, is an additional factor that establishes trust towards it. Under no circumstances should an individual be taken by surprise with the content of newly introduced formal solutions, since it makes it impossible to accept rational assumptions concerning the way of acting as well as consequences associated with it, as well as in broader context it is the expression of the disloyalty of a state towards its own citizens.

The rule o the protection of acquired rights meaning not being able to annul or limit subjective rights in arbitral way is not of absolute character, since it is allowed to renounce it in case there is a collision between constitutional values establishing this rule and other constitutional values that are objectively more significant. By introducing limits the sphere of subjective rights of an individual, however, a legislator ought to consider previously a number of following conditionings:

- the existence of foundations concerning this issue in constitutional values,
- the lack of possibility o realization of a particular constitutional value without interfering into the sphere of acquired rights,
- the real priority of constitutional values, due to which the limitation of acquired rights takes place over the values at the foundation of protecting these rights,
- initiating actions aiming at making it impossible for an individual to get accustomed to altered legal solutions.

While introducing changes in rules in power one ought to respect the need to protect the business in progress, i.e. the ones which were initiated within the previous legal order. The undertaken activities, mainly in economic and financial spheres, are frequently a process prolonged in time, requiring legal stabilization and predictability during the whole period o realization. Formal determination of time frames of the activity on the basis of unchangeable rules may be a factor granting the protection of business in progress.

Making it possible for addressees of introduced rules to get acquainted with their content before they enter into force is granted by determining the time between the publication of a normative act in the Official Journal and entry into force (*vacatio legis*). It establishes the opportunity of an early adjustment to new regulations, excluding the situation when addressees are taken by

standpoints referring to this issue is presented by B. Banaszak, M. Bernaczyk, *Aktywizm sędziowski we współczesnym państwie demokratycznym*, Warszawa 2012, pp. 260–265. The term of judicial activity itself has appeared as the critical reconstruction of court practice – T. Stawecki, *Dyskusje wokół aktywizmu i pasywizmu sądów konstytucyjnych jako spór o wykładnię konstytucji* [in:] *Wykładnia Konstytucji. Inspiracje, teorie, argumenty*, ed. T. Stawecki, J. Winczorek, Warszawa 2014, p. 355.

[19] In this context it is worth pointing at an interesting concept of the legal security in objective dimension (legal state of effective protection life goods of an individual and his interests by law) and the legal security in subjective dimension (i.e. the sense of security) – see. J. Potrzeszcz, *Bezpieczeństwo prawne w demokratycznym państwie prawa* [in:] *Demokratyczne państwo prawa*, ed. M. Aleksandrowicz, A. Jamróz, L. Jamróz, Białystok 2014, pp. 105–113.

surprise. The departure from the requirement of applying *vacatio legis* may take place only exceptionally and be result from an important significant public interest[20].

The essence of non-retroaction rule is expressed in the statement that newly introduced legal regulations can only be applied to events taking place after they have been introduced, and not to the previous ones. Therefore, legal consequences of actions or cessations ought to be determined on the basis of the rules existing at the moment when they happen. The rule comprehended in such a way, does not actually experience limitations leading to the deterioration in the situation of addressees of the norms used backwards. One may not, however, exclude applying law backwards in situations that are advantageous or at least neutral for subjects who this action concerns.

The specification of the regulations, being one of the principles of a decent legislation[21], means clarity, precision and the lack of unnecessary complication of the content[22]. Inexplicit character of existing solutions, leading to discrepancies in interpretation, influences on the process of applying law in negative way[23], expressing even in creation of corruption encouraging mechanisms associated with unjustified freedom of possible formal valuation. The lack of specification of regulations, generally acute, creates a particular danger in the space of solutions concerning human and citizen freedoms and rights as well as the ones including sanctions, since possible deficiency in these spheres might be of hard to reverse character.

The possibility of applying appeal proceedings consists in examining the formal correctness and factual rules of judicial decision, as well as administrative decisions, leads to legally valid (final) solutions of permanent character that guarantees the stable situation of parties of a particular proceedings. The premises creating the opportunity to put extraordinary appeals in motion, are under strict formal limitation, which additionally guarantees these permanent, stable situation. It is, however, the execution of resolution that indicates the efficiency of public authority organs, since inability to enforce them makes the state authority and the sense of the functioning of law applying organs doubtful.

The essence of the *ne bis in idem* rule is expressed in the prohibition of repeated pursuing and punishing a person for a committed crime after the previous legally valid sentence or acquittal. The legally valid decision of a court in a particular case establishes the state of *res iudicata*, which excludes the possibility of conducting another proceedings concerning the same act towards the same individual. It is not, however, excluded to introduce other procedures than criminal, since the *ne bis in idem* rule is applicable exclusively to the latter ones.

The review of rules derived from the rule of the democratic state of law, despite the previously declared methodological doubts, allows the confirmation of the thesis that they favour more complete perception o constitutional freedoms and rights. It seems to be the role that is positive enough to justify some relativism of the applied method, which, however, needs to be considered inadmissible without the value of positive influence upon the sphere of freedoms and rights.

Functions of the rules

Functions of the rules, when comprehended as the expression of the system impact in theoretical-legal, institutional and personal dimension, determines the actual need of their creation. Reference to legal rules remains the expression of doctrinal achievements referring not only to constitutional law but also to other branches of law, achievements, what is of significance, hardly ever fulfilling the criteria of consequence and complexity.

Obviously, one may assume the lack of sense in creating complex systems of legal rules, pointing at the subjectivity in construction sphere[24]. However, a spe-

[20] More broadly M. Stefaniuk, *Ważny interes (publiczny, społeczny, państwa) jako warunek odstępstwa od zasady zachowania odpowiedniej vacatio legis* [in:] *Demokratyczne państwo*, ed. M. Aleksandrowicz, A. Jamróz, L. Jamróz, Białystok 2014, pp. 115–125.

[21] As P. Winczorek remarks, the increase of cases at the Constitutional Tribunal might indicate significant mistakes in the process of law making – see P. Winczorek, *Polska państwem prawnym: ideał a rzeczywistość* [in:] *Spory wokół teorii i praktyki państwa*, ed. G. Ulicka, S. Wronkowska, Warszawa 2011, p. 90.

[22] Detailed requirements in this respect concerning the usage of legal language by a legislator are described by M. Andruszkiewicz, *Jasność prawa a język prawny* [in:] *Państwo prawa. Parlamentaryzm. Sądownictwo konstytucyjne*, ed. A. Jamróz, Białystok 2012, pp. 37–49.

[23] It corresponds with noticing codependence between the directives of editing a legal text and the directives of interpretation – more broadly on relations between the above mentioned directives O. Bogucki, A. Choduń, *Zasady techniki prawodawczej w orzecznictwie Trybunału Konstytucyjnego w odniesieniu do demokratycznego państwa prawnego* [in:] *Demokratyczne państwo*, ed. M. Aleksandrowicz, A. Jamróz, L. Jamróz, Białystok 2014, pp. 55–56.

[24] In the literature on this matter one may find many various divisions of constitutional rules made on the basis of a vari-

cial, interdisciplinary character of constitutional norms enables, as it seems, the perception of positive elements of determining the catalogue of constitutional legal norms for the construction of the whole normative system, as well as its comprehension and perception by individuals. As it has been already mentioned, basing the rules directly on the regulations of the fundamental law, will also narrow the potential subjectivity of valuation to classification dimension. The functions of the rules can be reduced basically to ordering layer, i.e. the one determining clear system rules, stabilizing, which is granting the complex influence of constitutional rules as well as educational, thus stabilizing the way of their particular perception.

Hierarchical function

The attempt of spatial, geometrical visualization of the legal system of the Polish Republic, consisting of thousands hierarchically ordered normative acts, inevitably leads to the model of pyramid topped with constitutional norms. This perfect in itself geometrical construction bases on regulations, whose existence in the specific form o legal rules is indispensable even for the virtual normative model. The influence of constitutional legal regulations on solutions resulting from sub-constitutional regulations may be considered both in the formal dimension, shaped by the superior position of the fundamental law within the legal order, which makes guarantee function, as well as factual, i.e. signified by the contents determined by the rules. The latter one undoubtedly affects positively one of basic criteria, which an appropriately constructed legal system ought to represent, i.e. the lack of contradiction within it. However, it would be a truism to believe uncritically in the complex character of regulations resulting from the Constitution, which is often expressed in the thesis on the necessity of the content agreement of all the normative solutions with the fundamental law. The obstacle being here limited to only most significant, according to the system maker, range of issues making the constitutional matter. Therefore, it is difficult to justify logically, due to the lack of reference points, the demand of preserving the consistence with the Constitution of the sub-constitutional acts, which are not included in the fundamental law. It seems that fulfilling the requirement of not being contradictory with the fundamental law is sufficient, which is the expression of merely the lack of violating constitutional rules, but not developing them. The conformity is an unarguably recognized criterion, yet referring to solutions of a definite dimension, i.e. directly deriving from the Constitution. In consequence, then, it is possible to apply two horizons in relations between constitutional norms and the ones originating from lower rank acts-closer, which requires conformity, and further, requiring the lack of contradiction. This dependence, however, may not be perceived as a factor limiting the necessity of functioning of clear rules, being not only a component but globally affecting the system of law. Such a location of rules, with formal system granting of their dominating position is the expression of inspiration to a determined direction of normative activity. In the process of law making, therefore, the necessity of accepting regulations, which even if not directly basing on the content of the Constitution are at least not contradictory with it, should be taken into account.

It is worth noticing that formally imposed criteria in the matter of examining the constitutional value of law, determine the relation between the fundamental law and sub-constitutional regulations merely as conformity or the lack of it. Observing and respecting this fact does not exclude, as it seems, the necessity of considerations expressing references existing in the discussed matter more thoroughly.

Stabilizing function

Formulating the catalogue of constitutional rules would be an action of illusory sense without the legal mechanisms granting their system impact. It is reduced to accepting solutions enabling the actions leading the loss of power of normative acts considered non-constitutional. The examination of conformity of law with the Constitution may concern not only normative acts already in power, which is obvious, but also,

ety of criteria, for instance, A. Chmielarz makes the distinction on the basis of the criterion of legal significance (which results in the division into head rules, of particular legal importance, including the rule of the republican form of government, the rule of the unitary for of the state, the rule of democratic state of law, and the rest of the rules) and problematic criterion (which results in the division into the rules concerning the legitimization of the forms of performing state authority, rules referring to the mechanism of the state authority, as well as rules concerning particular spheres of political and socio-economic life in the state) – see A. Chmielarz, *Funkcja prawna konstytucji na przykładzie Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 roku*, Warszawa 2011, pp. 41–55.

yet in limited range, to the ones that are to enter the legal order. Thus, the reaction referring to law regulations, which are doubtful from the perspective of its accordance to the norms, and as a result constitutional rules, comprises also potential undertakings of preventive character. Then the elimination of a normative act may take place rapidly enough to prevent its regulations from being used as legal grounds for decisions made by law applying organs in individual cases. The statement on the contradictory character towards the Constitution of legal regulation already in force, apart from the cassation result, additionally creates the problem of the possible necessity to put in motion extraordinary appeal procedures towards legally valid (ultimate) acts of applying law, basing on the regulations in question. Formal guarantee of o constitutionally appropriate system construction reduces the role of regulations to the basis determining the shape of regulations referring to the constitutional matter, or generally determining, i.e. granting merely the lack of contradiction of norms. The complexity of the influence of rules on the system, provided by verification solutions, requires paying attention to institutional guarantees. The necessity of their possibly precise legal directing is an element narrowing discretionary attitude on the part of subjects examining the constitutional character of norms, which while taking into account the legal character of decisions, resulting in general validity and finality, is the leading issue. The supremacy of constitutional rules, leading to excluding regulations colliding with the legal order, determine the range and character of their influence on the system of law, which has already been referred to as complex and stable impact.

Educational function

While discussing the undoubted need for the development of legal education of citizens, one is obliged to take into consideration the rules, which ought to make the foundations for the shaping of the process The ignorance of detailed regulations within such categories as civil, criminal, commerce or financial law, although common and onerous in particular situations, is possible to overcome by, for instance, legal assistance of representatives of lawyers corporations or the requirement, of guarantee character, to inform parties of a proceeding about their legal position by a proceeding organ. Partially, which depends on the specifics of content of constitutional norms, legal assistance is possible while using them, at the same time releasing addressees from deeper considerations. The realization of a number of regulations typical for the democratic order can in no way be considered in categories limited subjectively to legal relations of parties of a particular proceeding, since they contribute to decisions of global, whole state character. The conviction of the necessity of participation in the election or referendum act, and more importantly the manner of this participation, does not actually require possessing a special legal knowledge, but realizing the sense of preserving one`s own subjectivity, and as a result shaping the quality of performing power, which no doubt translates into the knowledge and comprehension of at least constitutional system rules. Even the general knowledge makes it easier to make rational decisions, not based exclusively on emotions, and not l succumb uncritically to the techniques of political marketing. System rules and other constitutional legal rules set the directions of relations between organs of public authority and individuals within the range of their competences either in direct or indirect way. Elimination or limitation of the distance when it comes to the level of legal experience, which unfortunately, as it, seems is frequently taken advantage of by organs applying law, may favour more complete realization of freedoms and rights attributed to individuals. It also contributes to mental fixing of scheme on serving, mainly towards citizens, character of existing and functioning of public authority organs. Such a reception of formally established constitutional rules ought to find possibly broad social translation, which however is conditioned by the quality and range of rules determining the system order of the Republic of Poland.

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