

# Constitution of the Republic of Poland as the Foundation of Democratic Society and State

Joachim Osínski\*

## Abstract

*Following the downfall of communist rule in 1989, most countries in Central and Eastern Europe promptly adopted new constitutions. In Poland, however, the constitutional debate consumed eight years. The paper aims at exploring the still relevant question whether the constitutional process should proceed more vigorously so that legal foundations of the newly restored democratic state could be laid right after the systemic change. It is argued that protracting disputes eventually allowed for adopting a constitution based on a broad consensus, thus contributed to a long-term political stability of the country.*

## Introduction

The process of assembling a new constitution and subsequently passing it into law usually takes place in special circumstances. Seldom such process occurs in comfort of predictable political and economic environment, sustained by consensus among political elites and according to thoroughly planned scenario. The latter was the case of the Constitution of the Republic of Finland of June 11<sup>th</sup>, 1999 or the Federal

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\* Department of Public Administration, Warsaw School of Economics.

Constitution of the Swiss Confederation of April 18<sup>th</sup>,1999 (See: Constitution of Finland of 1999). However, more often than not the constitutional process follows a curvy path, shaped by socio-political crisis and conflict. Such were the cases of constitutions adopted in CEE during the era of systemic transformation. Certainly each case had its specific features not observable in the other countries of the region. Despite the fact that national parliaments played a crucial part in the legislative process, in some countries the executive power gained more influence than in the neighbour states (e.g. the Russian Federation). The length of constitutional process depended on how smoothly (or not) transformation proceeded. Yet, all the cases in the region contributed to the global wave of democratization building up. Between 1990 and 1996 total of 69 democratic constitutions were passed throughout the world, a vast share of which consisted of acts adopted by CEE states surrounding Poland.

Nevertheless, as of 1996 Poland – despite being a pioneer and a leader of democratic change in the post-communist part of Europe – still did not belong to the club of the CEE states with new constitutions. Firstly, one may ask of the reasons behind that dragging debate over the fundamental legislative act. The question itself is quite trivial and, more importantly, had been repeatedly raised in various context. What can hereinafter be done is providing a synthetic account of main reasons and different political motives of major players. Secondly, a question arises whether such a delay in adopting a new constitution did more help or harm to the act itself in terms of its content. That question seems of more weight, as the debate over the need to amend the constitution has become very lively, with not only politicians but also media commentators and (to a lesser extent) academics being involved<sup>1</sup>. Thirdly, a question should be asked how the daily practices of political life relate to core values and specific regulations carried by the constitution. Before answering that

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<sup>1</sup> With the conflict rising between the President and the newly appointed Prime-Minister as well as some of the members of his cabinet after the parliamentary elections of 2007, numerous comments were being forwarded pointing to the alleged ambiguity of certain provisions of the Constitution regarding the issue of mutual relations of the two branches of the executive power. The conflict, however, should rather be seen as a rivalry between two major political parties, seeking such interpretations of the Constitution as to secure their particularistic interests as much as possible. So, behind the façade of a constitutional dispute, there has been quite a conventional political struggle of parties tightly attached to clearly divergent philosophies of power (hence each unwilling and unable to recognize position of the counterparty) continuing. As the parties involved has not been capable of ending the stalemate by means of parliamentary debate, they turn to the very foundation of the national political system in search of arguments supporting their respective viewpoints, being apparently insensitive to the fact that with such a fierce conflict still unresolved, chances of assembling a parliamentary majority necessary to amend the Constitution are virtually nonexistent.

question in detail, I allow myself a short remark that the incongruities observed in that dimension are more a result of immature democratic political culture in Poland than defects of the constitutional regulation.

## The Political and Procedural Reasons Behind a Dragging Constitutional Debate

The first political reason stemmed from the agreement reached at the ‘Round Table’ negotiations between the communist government and democratic opposition in 1989, in particular from the part of the agreement concerning elections, which was to be only partially democratic in case of the lower chamber of parliament (‘Sejm’), while completely free and entirely democratic in case of the upper chamber – the Senate (‘Senat’) (See: *Stanowisko w sprawie reform politycznych*: 7)<sup>2</sup>. The course of the pre-election debate clearly indicated that the opposition were willing to treat the Senate as the sole democratically legitimate institutional form of political representation at the central government level. After the election such a position towards the Senate was maintained not only by democratic forces in the political scene, but also by the vast majority of the public opinion. Thus, it was the Senate (and definitely not the Sejm), to whom the society was ready to hand a mandate to launch the work over the future truly democratic constitution.

In practice, however, each chamber of the parliament established a separate legislative commission to prepare the constitution on December 7<sup>th</sup>, 1989. Lacking the relevant legislative procedures, the two commissions not only would not engage in cooperation, but continued to work virtually independently, which in the end of the day led to completion of two draft legislations quite distant from each other in terms of content (Pietrzak: 149). The Sejm voted favourably on its draft legislation on October 10<sup>th</sup>, 1991, while the Senate concluded its works on October 24<sup>th</sup>, 1991<sup>3</sup>.

The draft constitution completed by the Sejm consisted of a preamble followed by 161 articles divided into 12 chapters (See: *Projekty Konstytucyjne 1989–1991* 1992: 19–53). Despite certain hopes the draft would be embraced by the parliament in the

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<sup>2</sup> It was emphasized in the paper that one of the major tasks for the future parliament ‘is a creation of the new, democratic constitution’.

<sup>3</sup> The proceedings of the commissions over 1989–1991 period were collected and published in: *Komisja Konstytucyjna. Biuletyn 1990–1991* and in: *Prace Komisji Konstytucyjnej Senatu 1990–1991*.

next term, numerous constitutional lawyers and vast part of political class openly spoke of the draft as a result of political compromise, which most likely, due to rapidly changing political environment would be dropped off the agenda after the first entirely democratic parliamentary elections of 1991.

On the other hand, the draft assembled by the Senate significantly differed from the Sejm's version. It opened with the invocation 'In the name of the God almighty!' and consisted of 160 articles divided into 10 chapters (Ibid.: 54–94). Furthermore, following the adoption of the draft the Senate issued a special proclamation, in which it clearly stated that the draft would be handed over to the parliament in the next term<sup>4</sup>. Regardless of ideological cleavages present in the parliament, there was a widespread belief that the new constitution would be (and should be) passed into law on the 200<sup>th</sup> anniversary of the first Polish constitution (the so-called the Constitution of May 3<sup>rd</sup>) adopted in 1791<sup>5</sup>.

Another reason behind the deceleration of the legislative works on a new constitution stemmed from the fact that multiple political parties crafted their own drafts of the constitution over the period 1989–1991, and seemed reluctant to abandon the results of their work in favour of other projects put on the table by their political competitors. Chronologically, the Democratic Party (Stronnictwo Demokratyczne, SD) – one of the satellite parties of the communist party during the authoritarian socialism era – stepped forward with the document entitled 'The Theses for the Constitution of Poland' on January 9<sup>th</sup>, 1990. The 'Theses...' consisted of a draft preamble followed by 95 theses divided into six chapters (See: *Projekty Konstytucyjne*: 95–116). The other satellite party from the communist times – the United Peasants' Party (Zjednoczone Stronnictwo Ludowe, ZSL) – soon proceeded with the project of its own, which was originally published in the party's official newspaper 'The Green Flag' (*Zielony Sztandar*) on July 22<sup>nd</sup>, 1990. That project did not include a preamble and consisted of 102 divided into 6 chapters (Ibid.: 117–140). The document contained one quite innovative proposal (in the Article 2) of replacing the Senate with the Chamber of the Self-government (*Izba Samorządowa*).

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<sup>4</sup> Further reading on the issue available in: *Prace Komisji Konstytucyjnej Senatu*.

<sup>5</sup> There were also some voices critical of such approach. In July 1991 J. Zakrzewska wrote: 'Such voices could be heard even prior 1989, which indicates that certain fondness of anniversaries is common, spreading across political divisions. Myself, I have never been an admirer of such solution, because rushing with anything (except monuments, maybe) only to match anniversaries seems a doubtful task to me (quite to the contrary of a popular belief, especially in the case of the Constitution of 3 May). Therefore, I am in a position that the parliament should not be criticized for not having passed a new constitution on May 3<sup>rd</sup>, 1991. in: *Zakrzewska 1993*: 58.'

The new parties emerging from the former anti-communist opposition also did not hesitate to disclose their projects or constitutional theses. For example, the Centre Alliance (Porozumienie Centrum, PC) completed the document called "The Guidelines for the Draft of the Constitution of the Republic of Poland" during its first congress, which took place on March 2<sup>nd</sup> and 3<sup>rd</sup> 1991<sup>6</sup>. The document was divided into four parts, each regarding one of the democratic powers: the president, the government, the legislature, and the judiciary. It should be noted that the party was going to refrain from incorporating the elaborate list of civic liberties, claiming that 'an attempt to include the full catalogue of such rights cannot be successful', a statement which stirred some controversies at the time (Projekty Konstytucyjne 1989–1991: 145).

The Confederation for Independent Poland (Konfederacja Polski Niepodległej, KPN) prepared another project (quite original, not only in terms of the content, but also a language employed). On July 5<sup>th</sup>, 1991 the KPN leader Leszek Moczulski handed a copy of the document entitled 'The Programme for the Third Republic' to the President of Poland Lech Wałęsa at the conference called "The Constitution for the Third Republic". The document contained a draft constitution accompanied by several other draft legislations<sup>7</sup>. As for the project of the constitution, it consisted of 124 articles divided in to 14 chapters (Projekty Konstytucyjne 1989–1991:146–176). The promoters of that project also insisted that until the time the new constitution was adopted, a pre-war constitution of 1935 should be reinstated first, and then replaced by the so-called Provisional Constitution<sup>8</sup>.

Further reason behind the dragging pace of the constitutional process should be sought for in the very nature of the transformation process taking place in the Central and Eastern Europe. That process was in fact multi-linear, unpredictable, spontaneous and with an extremely unstable, even liquid, internal structure. Due to the high velocity of political life between 1989 and 1991 the Constitutional Commission of the Sejm devoted most of the time during the total of 56 meetings it held to the matters

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<sup>6</sup> The authors of the document recruited from politicians and scholars bound with the party: H. Izdebski, W. Lamentowicz, A. Szcząska, R. Gwiazdowski and P. Wójcik (secretary of the team).

<sup>7</sup> The authors of the document were as follows: L. Moczulski, K. Król, D. Wójcik, A. Ostoja-Owsiany, P. Aszyk, B. Czyż, A. Izdebski, M. Janiszewski, A. Lenkiewicz, Z. Łenyk, A. Mazurkiewicz, W. Pęgiel, A. Słomka, A. Terlecki and A. They.

<sup>8</sup> Aside from the abovementioned projects, there were also number of initiatives undertaken either by individuals or teams of authors, among which: the project by M. Huchla; the project by the team led by S. Zawadzki; the project by A. Mycielski and W. Szyszowski; the project by J. Zakrzewska and J. Ciemniński; and the project by J. Lityński.

of new election ordinance for the upcoming parliamentary elections scheduled for the autumn of 1991, the side-effect of which was neglecting the issue of a new constitution. The entire parliament was focused on the abundant number of crucial legislations concerning the most vital issues of economic and social nature. Moreover, as time went by, it gradually became obvious that the parliament would not be allowed to serve the entire four-year term, as for the majority of deputies and senators of the non-communist provenance the fully democratic elections appeared to be the main priority, even more urgent than adoption of a new constitution (Geremek: 1–2).

Those three reasons combined effectively prevented adoption of a new constitution between 1989 and 1991. In my opinion, however, it was the belief that the parliament elected in only partially democratic manner had neither moral nor legal power to vote on the constitution for a democratic state, which prevailed among the non-communist politicians, and eventually blocked the constitutional process.

Such belief was based on a quite solid ground but its prevalence resulted not only in a delay in the constitutional process but also in overlooking a unique chance for a swift adoption of a new constitution (Chruściak 1997: 12–13). After the initial consolidation of anti-communist opposition, the decomposition of that political block would soon begin. New (competitive and often contradictory) concepts were emerging, new leaders were entering the stage, and new social and economic challenges, which required immediate action, were materializing. After all, the right time for adoption of a new constitution passed, and then a new political climate favourable for the resumption of the constitutional debate needed more than two years to crystallize. In the turbulent era of transformation two years were certainly a long period of time.

## Pros and Cons of the Dragging Constitutional Process

The first entirely free and democratic parliamentary elections in post-war Poland took place on October 27<sup>th</sup>, 1991. In the newly elected parliament, there were representatives of more than 20 parties present, most of which originated from the former anti-communist opposition. The number of candidates competing in the elections was exceptionally high, in particular in metropolitan districts<sup>9</sup>. Ultimately,

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<sup>9</sup> For example, in the District No. 1 (the Capital City of Warsaw) there were 17 seats in the Sejm to win, for which total of 387 candidates of 35 committees competed. (See: Wyniki wyborów do Sejmu RP 1991).

the elections produced a very fragmented parliament, where the biggest faction – the Democratic Union (Unia Demokratyczna, UD) – claimed merely 62 seats for a total of 460. Such an extreme dispersion of deputies among multiple factions would hamper a coalition-building in the parliament over numerous causes, including the new constitution. First of all, the new parliament decided to discontinue works on the drafts completed during the previous term but instead to concentrate on resolving procedural issues regarding the constitutional process. It was argued that the former, only partially democratic Sejm, should not in any case dictate the new, truly democratic, parliament how to proceed over a new constitution.

As the result, procedural matters once again overshadowed the essence of constitutional process. The parties present in the parliament rushed to formally submit their projects, beginning with the draft by the Christian National Union (Zjednoczenie Chrześcijańsko-Narodowe, ZChN) and the jointly prepared draft by the Democratic Union (Unia Demokratyczna, UD) and the Liberal-Democratic Congress (Kongres Liberalno-Demokratyczny, KLD). In the following debate over those drafts, on the one hand there were arguments that the new constitution should be adopted only by a special majority of 2/3, while on the other hand there were voices (some of which quite ridiculous) questioning the need of general approval by the whole nation in a referendum<sup>10</sup>. All in all, the deputies appeared to be concerned more with formalities and advertising their own projects as the only appropriate ones rather than with the primary objective of adopting a viable democratic constitution for the state.

On March 10<sup>th</sup>, 1992 the President of Poland submitted a draft legislation regarding the procedure of constitutional process, previously having objected the draft legislation on the very same issue prepared by the legislative commission of the Sejm. Time went by, and the President and the parliamentary majority (both of the same ‘Solidarity’ background) continued to struggle with formal disputes and ambitious queues, making the adoption of a new constitution a more and more distant goal. After another straw in the Senate, the Act on Procedures for Preparation and Adoption of the Constitution of the Republic of Poland was finally adopted on April 23<sup>rd</sup>, 1992, and following its signing by the President, was eventually published in late September (Journal of Laws 1997: 67, item 336). Apparently, enactment of the Act consumed 10 months since the parliament had been elected.

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<sup>10</sup> For example, S. Niesiołowski, MEP, strongly opposed the idea of the referendum, and presented the following argument to support his view: ‘I believe that for at least next few years we should not bother ourselves with elections or referendums’. (*Sprawozdanie Stenograficzne z 5 posiedzenia Sejmu RP w dniach 3 i 4 stycznia 1992 r.* 1992: 15).

One year after the elections the Constitutional Commission of the National Assembly (both chambers of the parliament), whose existence was stipulated by the aforementioned Act was established on October 30<sup>th</sup>, 1992. The parliamentary majority with the ‘Solidarity’ background needed 12 months to prepare organizational and procedural frames for further proceedings with the constitutional process. According to the regulations set by Act, for six months since the day the Commission launched its works, the eligible entities (that is, the President, groups comprising at least 56 members of the National Assembly, and the Constitutional Commission) would be able to formally submit drafts of the constitution. At the moment, at least part of the legacy of the parliament serving the previous term was already wasted, and, considering the legal constraints, the Constitutional Commission could begin to proceed with works on the drafts submitted as late as in mid-1993, around 18 months since the elections.

Despite lagging of the process, it should be noted, however, that the debate over the new constitution appeared more democratic in style than in most of the neighbour states going through similar experience of political transformation, as the whole nation, as well as various interest groups and circles of influence became deeply involved not only at the public discourse level but also at the level of the Constitutional Commission<sup>11</sup>. Therefore, the spectrum of collective actors engaged in the process extended to eventually embrace not only new emerging political parties but also other groups and organisations constituting the fabric of civil society.

As everything seemed finally settled for a successful legislative works, the parliament was prematurely dissolved by the President’s decision on May 31<sup>st</sup>, 1993, after the cabinet of the Prime-minister Hanna Suchocka had been dismissed by the Sejm in a confidence vote. That event should be seen as a vivid manifestation of the ongoing dispute between the President and his surrounding (promoting the concept of semi-presidential political system, bearing some resemblance to political system of France) and the parliamentary majority of the ‘Solidarity’ provenance (opting for parliamentary-cabinet system), which in the end led to a dramatic turn in the transformation process. The next parliamentary elections produced a stunning victory for two post-communist parties: Democratic Left Alliance (Sojusz Lewicy Demokratycznej, SLD) and the Polish Peasants Party (Polskie Stronnictwo Ludowe, PSL). The two parties along with a post-Solidarity leftist Labour Union (Unia Pracy, UP) seemed more willing to seek compromise over the constitution with other

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<sup>11</sup> That particular feature of the constitutional process in Poland was highlighted by B. Geremek, asking provocatively in the title of his article: *Kto się boi Konstytucji?* (1991): 1–2.

(centre and right wing) post-Solidarity parties, than the latter among themselves. For that reason, aside from the President's original intentions behind the decision to dissolve the parliament in the spring of 1993, its outcome proved positive as long as the constitutional process is concerned.

Facing the constitutional process dragging, major political actors tended to favour a transitional solution of the so-called Minor (Lesser) Constitution first<sup>12</sup>. Notably, other countries of the region did not consider such a solution, which makes such an arrangement an exclusive characteristic of Polish constitutional process. The idea of conceiving the Minor (Lesser) Constitution first surfaced in the semi-democratic Sejm elected in 1989 with two consecutive projects prepared by the government accompanied by another by the Constitutional Commission of the Sejm (See: *Polskie prawo konstytucyjne*: 120). Due to an early ending of that term, none of those three projects ever advanced to the stage of parliamentary debate. In late January 1992 new project of the constitutional act regarding relations between legislative and executive powers was submitted by the Democratic Union. After a lively debate in the Sejm, the project was adopted on September 1<sup>st</sup>, 1992. The Senate introduced a number of amendments to the bill timing to strengthen its own position in the constellation of power, some of which would later be rejected by the Sejm. On September 17<sup>th</sup>, 1992 the Sejm finally voted the bill into law, calling it the Constitutional Act on mutual relations between legislative and executive powers and on the local government (Journal of Laws 1992). Subsequently, President Wałęsa signed the Act, which came to force on December 8<sup>th</sup>, 1992.

The specific regulations of the Minor Constitution created a foundation for a constitutional consensus between the key centres of power decisive for the course of changes in the political system of the country for the next few years (See: *Polskie prawo konstytucyjne*: 93). However, soon the Minor Constitution proved to bear numerous flaws and inconsistencies, which inevitably led to disputes over prerogatives of respective powers and political institutions not only among politicians but also academic experts in the field. At the political level, the Minor Constitution should be seen as a compromise between the parliamentary majority and President Wałęsa

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<sup>12</sup> In the scholarly literature there is a view that the term 'Minor (Lesser) Constitution' is in fact more than just a portable shortened name for the legislative act, whose full title is long and complicated. The notion applied to the act indicates its true weight as a provisional and transitional arrangement essential for the interim period lasting until the ultimate goal of adopting a constitution is attained. However, the scope of the Minor (Lesser) Constitution was more narrow than it usually occurs in the case of a fundamental law a constitution is; for instance the Act did not embrace such key issues as civic rights, liberties and obligations. See: *Polskie prawo konstytucyjne*: 90–91.

regarding roles and functions of executive and legislative powers. Whereas the parliamentary majority supported the concept of division of power with the locus placed in the parliament appointing Prime-ministers and cabinets accompanied by a president with marginal prerogatives (narrowed mostly to representational duties), the President favoured the idea of a system, in which the head of state would be assigned a position of arbiter between a parliament and a cabinet. However, the string of queries and disputes over interpretation of the Minor Constitution – always initiated by the President seeking every opportunity to expand his power – which culminated in early dissolution of the parliament and elections in 1993 suggests that the head of state (and political circles centred around him) never considered that compromise entirely satisfactory from their point of view.

The Minor Constitution neither could resolve the political dispute over the future form of national political system in general, nor provide a ground for designing particular solutions. The permanent conflict between the parliament and the president seemed to have convinced a number of post-Solidarity politicians (mostly associated with the Democratic Union, which later transformed into the Freedom Union /Unia Wolności, UW/) that the future constitution should be backed by a broad political spectrum, including the post-communist parties, in order to effectively neutralize expansive rhetoric and actions of the ‘presidential camp’. Furthermore, the lesson of ‘cooperation between the parliament and the president’ thus far experienced apparently taught parliamentary parties of a need to devote particular attention to the issue of the content of the future constitution with a view of avoiding the ambiguity of the Minor Constitution and prevent a torment of ongoing reinterpretation of the act. Achievement of that goal required reinforcement of the expertise behind the constitutional commission. Stronger expertise could be provided through incorporation in the constitutional process the circles in the academia either connected to or simply associated with the communist regime, which to that point had been consistently denied any opportunity to become involved. Those experiences, however, could fully be utilized by the parliament of the next term<sup>13</sup>.

On September 19<sup>th</sup>, 1993 the second fully free and democratic parliamentary elections were held. As a result, the political scene were completely reshuffled. Two post-communist parties emerged as the leading actors of the new Sejm: the

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<sup>13</sup> Over the period of six months after establishment of the Constitutional Commission (September 30<sup>th</sup>, 1992), total of seven projects of constitution were delivered to that body by various entities entitled to doing so. The Commission managed to meet for a few sessions, during which four of the submitted projects were presented and discussed. The works terminated prematurely following the President’s decision to dissolve the parliament as of May 31<sup>st</sup>, 1993.

Democratic Left Alliance (Sojusz Lewicy Demokratycznej, SLD) won 171 seats in the lower chamber, while the Polish Peasants Party (Polskie Stronnictwo Ludowe, PSL) claimed 132 seats. Those two parties along with a post-Solidarity Labour Union (Unia Pracy, UP), whose faction consisted of 41 deputies, received altogether 344 seats for a total of 460 in the Sejm. Out of the remaining post-Solidarity parties only the Democratic Union (Unia Demokratyczna, UD) scored a moderate success claiming 74 seats in the Sejm (Wyniki wyborów do Sejmu RP 1993). In the Senate the shares slightly different, however, the two key parties managed to secure a comfortable majority in the chamber (where total number of seats amounted to 110). SLD won 37 seats, while PSL had 36, NSZZ 'Solidarność' – 9, UD – 4 and, finally UP – 2 seats respectively (Wyniki wyborów do Senatu RP, 19 września 1993 r.).

Emergence of the new parliamentary constellation opened another chapter in the long-lasting history of the constitutional process. On October 22<sup>nd</sup>, 1993 the Sejm appointed 46 deputies to the Constitutional Commission, and on the following day the Senate nominated 10 senators to participate in the works of that body. On January 18<sup>th</sup>, 1994 the Constitutional Commission adopted its rules of conduct, among which a principle of 'opening' its proceeding to a wider spectrum of actors was included. In detail, that principle aimed to involve in the works of the Commission also the non-parliamentary political parties, trade unions, nation-wide social and professional organisations and associations, and representations of churches and religious associations (Chruściak 1997: 23).

The following non-parliamentary political parties received invitations to participate in the works in the Commission: the Liberal-Democratic Congress (Kongres Liberalno-Demokratyczny, KLD), Union of Real Politics (Unia Polityki Realnej, UPR), the 'X' Party (Partia X), Polish Peasants Party – People's Union (Polskie Stronnictwo Ludowe – Porozumienie Ludowe, PSL-PL), the Centre Alliance (Porozumienie Centrum, PC), the Movement for the Republic (Ruch dla Rzeczypospolitej, RdR), and, finally, the Christian National Union (Zjednoczenie Chrześcijańsko-Narodowe, ZChN). Furthermore, 12 trade unions and social and professional organisations and associations were invited, as well as 11 churches and religious associations. While some of the 'guest participants' in the Commission frequently took part in the proceedings, some other did not seem very interested. The representatives of the President, the Council of Ministers, and the Constitutional Tribunal participated in the works on regular basis. The Commission further dealt with the projects 'inherited' from the parliament of the previous term, that is: the project completed by the anteceding Constitutional Commission, joint project of the PSL and UP deputies and senators, the project by the KPN, and, finally, the project

by PC<sup>14</sup>. All those procedural features were not present at the earlier stages of the constitutional process. Furthermore, they should also be described as innovative in the Central and Eastern Europe scale.

On April 22<sup>nd</sup>, 1994, the Sejm adopted the new constitutional act amending the Minor Constitution (the constitutional act of 1992). The amendments triggered a new conflict between the Sejm and the President, who stepped forward with his own constitutional act draft. A very significant feature of that draft was a clause stipulating that also a group of at least 100,000 citizens was eligible to submit constitutional projects (so-called 'citizens' projects'). Another innovative regulation proposed by the President determined that in case of new constitution being adopted by the parliament but subsequently failing to receive the nation's approval in the constitutional referendum, parliament was to be involuntarily (by virtue of law) dissolved. The Sejm rejected the proposals by the President, whose reaction was to withhold not only his project from the parliament but also his representatives from the Constitutional Commission. However, the parliament did not succumb to the pressure exercised by the head of state, and the Constitutional Commission continued to work, leaving the door open for each new project meeting the formal conditions set for submission. On the very last day (September 5<sup>th</sup>, 1994, as stated by law) yet another project was delivered to the parliament by NSZZ 'Solidarność', which managed to gather nearly one million signatures under their project, thus with such an enormous support drawn from the public became able to submit it as the 'citizens' project'<sup>15</sup>.

By the end of 1994 the Permanent Experts body of the Constitutional Commission completed the 'Multi-dimensional consolidated project of the Constitution of the

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<sup>14</sup> On May 23<sup>rd</sup>, 1994, the leader of the PC in an official statement delivered to the Chairman of the Commission informed that due to the decision taken at the III Congress of the party, the project submitted by the PC during the previous terms of the parliament was being withdrawn. The Commission accepted the decision, and subsequently refrained from any further proceedings involving that particular project. Other post-Solidarity parties, which (like the PC) found themselves driven out of the parliament as the result of 1993 elections, acted in a similar manner hoping to at least prevent the new parliament (dominated by the left) from adopting the constitution during the current term. The non-parliamentary opposition continued to denounce the parliament as having no sufficient mandate to proceed on the constitution. The sole exception among the post-Solidarity parties were the UD, which adhered to the idea of quickly completing the constitutional process, and even presented its own project of a constitution on May 9<sup>th</sup>, 1994.

<sup>15</sup> The Project presented by the Solidarity was authored by the Civic Constitutional Commission, which consisted of 22 members delegated by the trade union and political parties of the centre-right. M. Krzaklewski, the head of the 'Solidarity', served as the chair of the Commission.

Republic of Poland', which, after a few more weeks of editorial work by the Editing Sub-commission and minor adjustments, was named the 'Consolidated project of the Constitution of the Republic of Poland (in a multidimensional form)', and subsequently taken over by the Constitutional Commission as a basis for future works. The process, however, encountered numerous organizational obstacles, major of which seemed a notorious lack of quorum, set at the 50% level of total number of Commission's members. With no quorum, voting would become pointless, as no legitimate decision could be taken in such circumstance. Arguably, the lack of quorum stemmed from incoherent attitudes observable among the members of the Commission, which seemed to have split into three separate circles. The first circle could be described as a core of the commission and consisted of several MPs and senators, who alongside the experts carried the main burden of work. The second circle contained the members duly participating in the works but nevertheless remaining passive. The third circle consisted of MPs and senators occasionally making appearance in the sessions held by the Commission (Chruściak 1997: 91). Last but not least, there were frequent changes in the position of the Chair of the Commission held by three different politicians in a row: A. Kwaśniewski, W. Cimoszewicz, and finally M. Mazurkiewicz.

At the end of the day, the Commission successfully overcame all difficulties and after some 18 months of continuous works on June 19<sup>th</sup>, 1996 finished reviewing the project and gave its seal of approval. That period came to be regarded as a crucial part of the constitutional process (Ibid.: 89), because the consolidated project the Commission produced appeared consensual (but not beyond the point of being internally contradictory) as a result of incorporating the concepts derived from all seven projects delivered to the Commission by eligible social actors. The Commission then handled its finished project to the experts whose final comments and recommendations were eventually mostly recognized as valid the Editing Sub-commission. Having made those adjustments, the Sub-commission published the updated version of the project on August 27<sup>th</sup>, 1996. From September 17<sup>th</sup>, 1996 on, the Constitutional Commission resumed its works, proceeding over the text delivered by the Sub-commission. At that stage of the Commission's works one issue in particular seemed to be stirring the most serious controversies, as the members of the Commission struggle to reach the agreement over the shape of the preamble. The question was the following: should the preamble include an invocation to God or not? Once again, the compromise was achieved. On December 11<sup>th</sup>, 1996, the Commission voted for a modified version of the preamble as proposed by T. Mazowiecki, in which the opening invocation to God was omitted and the following sentence was included

in the further part the preamble: 'aware of the responsibility before God or our own conscience, we establish the Constitution of the Republic of Poland'.

With the Constitutional Commission finalizing its proceedings with the consolidated project, the National Assembly would commence the second reading if the final report presented by the Commission. On February 24<sup>th</sup>, 1997 the speech delivered by the Chairman of the Commission to the two chambers of the parliament present jointly officially marked the beginning of the next stage in the constitutional process. Subsequently, delegates of factions spoke on the subject. Whereas the major parties expressed its support for the project either in its entirety (SLD, PSL and UW) or with minor critical remarks (UP), the smaller factions – such as Non-party Block for the Support of Reforms (Bezpartyjny Blok Wspierania Reform BBWR), KPN, the Right Alliance (Porozumienie Prawicy) or the senate faction of NSZZ 'Solidarność' presented a large number of comments regarding specific regulations and suggested the criticized clauses be reformulated.

Eventually, after a stormy debate a vote over the Constitution as a whole was held on March 22<sup>nd</sup>, 1997. Out of 497 members of the National Assembly voting, 461 supported the Constitution, which meant that the act received more than necessary backing (a required majority in that particular case was 2/3 members of the National Assembly, which translated to 332 persons voting).

As a result, the Constitution successfully passed the test in the parliament and should consequently be handed over to the President, who in turn could propose his own amendments within 60 days after receiving the act from the National Assembly. President Aleksander Kwaśniewski submitted a series of amendments to 41 clauses of the Constitution on March 24<sup>th</sup>, 1997.

At the next stage of the constitutional process, the Constitutional Commission would prepare a new report regarding the proposed presidential amendments, which then was to be presented to the National Assembly in the third reading. Afterwards the Assembly would vote on each amendment. Gradually most of the amendments proposed by the President were accepted by the parliament. Finally the amended act became a subject of vote by the National Assembly. Out of 497 persons present, 451 supported the Constitution, while 40 were against, and 6 refrained from voting. A required majority was once again 2/3 members of the National Assembly, which translated to 332 persons voting. Thus the Constitution was finally adopted by the National Assembly. The critical phase of constitutional process launched eight years earlier was completed.

Nevertheless, the journey would not have been finished, if the very final step in the constitutional process had not been taken, namely the national referendum over the

newly adopted constitution<sup>16</sup>. The citizens' approval was a necessary condition to be fulfilled. Ironically, the country with the second longest constitutional tradition in Europe (tracing back to 1791), which pioneered the democratic change in Central and Eastern Europe was the last one in the whole region to introduce a genuine democratic constitution after the downfall of the communism. Fortunately, the new constitution matched the highest standards of the modern democratic world, thus provided a solid foundation for development of viable, yet citizen-friendly democratic state.

## The Scope of Constitution of Poland: Theory and Practice

More than a decade has passed since the Constitution was enacted, thus it is hardly surprising that not only politicians but also academic researchers have been increasingly keen on assessing the act's content and efficiency. It is not unexpected either that views of the politicians' (and of some journalists' as well) on the Constitution tend to be far more emotional and less neutral than those expressed by the experts. Almost routinely, after each parliamentary elections subsequent cohorts of politicians were voicing the need to amend the constitution in one way or another. Such a specific 'constitutiogenic' climate remained especially strong in the beginning of each term (reaching its peak in 2005) but as time went by it was gradually fading. It should be emphasized that after 1997 such an objective never seemed attainable with the parliament remaining divided so deeply that the constitutional majority could be constructed only in one, very specific case, that is introduction of the European arrest warrant as a part of *acquis communautaire*. Following the 2005 presidential elections new wave of postulates for amending the constitution emerged and continued to climb up after 2007 parliamentary elections, which produced a 'cohabitation Polish-style'<sup>17</sup>, a new phenomenon in the domestic

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<sup>16</sup> Having reviewed total of 433 formal protests, on July 15<sup>th</sup>, 1997 the Supreme Court issued a resolution recognizing the constitutional referendum of May 25<sup>th</sup>, 1997 as lawful and binding. President A. Kwaśniewski signed the Constitution on July 16<sup>th</sup>, 1997. On the very same day an edition of the Journal of Laws was published and three months later (October 17<sup>th</sup>, 1997) the Constitution of the Republic of Poland of April 2<sup>nd</sup>, 1997 finally came to force, replacing the constitutional laws previously binding.

<sup>17</sup> The unique form of cohabitation in Poland is shaped by the ongoing conflict between the parties involved, unlike in other European countries (e.g. Finland, France or Portugal), where periods

political arena. Interestingly, voices supporting the idea of changing the constitution could be heard not only from the ruling parties but also from the opposition, which also has been a quite a new pattern in behaviour of the political class regarding the foundations of the political system. Obviously, the aims pursued by different sides of the scene are divergent: while the presidential camp (his former political party being the major opposition party in the parliament included) is attached to the concept of expanding the prerogatives of the head of state, the current ruling coalition would rather see the scope of competences enjoyed by the Prime Minister broadened. For that reason, chances for building up a parliamentary majority to alter the constitution before 2010 (when the next presidential elections are scheduled) in one way or the other are virtually non-existent.

As the odds of any major changes in the constitution being introduced prior to the upcoming presidential elections (provided the candidate of the ruling coalition wins, effectively ending the cohabitation, otherwise the stalemate is likely to continue) are slim, it is worthwhile to ask the following question: is the constitution still adequate to the political environment, which has certainly evolved profoundly since the moment the act came to force? Let us not forget that after 1997 two momentous events occurred: in 1999 Poland joined NATO, and in 2004 was admitted to EU. In addition, a series of important domestic changes also took place. The answer to the question is short and concise: no, at the moment any major modifications of the constitution are not necessary, because its main provisions still remain functional to the demands of the environment, not only in political but also social and economic dimensions.

However, if the constitution still seems sufficient to the needs of the present world, one may inquire about the reasons behind the ongoing disputes over its content (especially such touchy subjects as mutual relations between the President and the Prime Minister) tearing the political class apart. Sadly, the major source of tensions appears to be a result of insufficient political culture of the elites. Unlike the

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of cohabitation were marked by pragmatic and consensual cooperation of the heads of state and parliamentary majority led by prime-ministers. Provided a cooperative approach of the two sides, even though conflicts appear from time to time, they are not destructive, mostly because heads of state elected in popular vote tend to identify themselves more closely with the entire society and less with their political circles. In addition, the form of Polish cohabitation has been affected by the fact that prior to 2007 parliamentary elections two major offices in the country were held by twin brothers, and following the defeat of the ruling coalition in 2007 and subsequent rotation in the office of the Prime-Minister, the President 'assumed' the position his brother, the former prime-minister, in the political rivalry. As a result the cohabitation in Poland evolved into a specific form that could possibly be described with a notion of 'management by conflicts' (created in the fields where spheres of influence of the President and the Prime-Minister cross).

political culture of mature democracies in the West, national political culture lacks in pragmatism and willingness to seek consensus. Instead, Polish political culture seems to retain uncompromising rivalry and ideological bias as its dominant components. Actually it is not a difficult task to prove that point, because there are numerous constitutions across democratic world, which by far are not as detailed and explicit in its content as their counterpart in Poland, and yet due to the higher standards of political culture observed by the elites in their everyday conduct, no disputes as depreciative and shameful as those arising in Poland in recent years happen.

With some elementary forms of mature political culture absent, a dubious practice of reinterpreting certain provisions of the constitution by parties and persons holding power in line with their particularistic interests is not uncommon. Unfortunately, it is not feasible to design any regulations to serve as 'safety valves' for the constitution simply because no lawmaker will ever be able to correctly anticipate each and every political situation in course of democratic life to which a specific, effective and undisputable solution can be applied. The most eminent constitutional academics have ridiculed as utopian the idea of responding to each new (that is: explicitly not accounted for by the constitution) situation with a detailed regulation to be incorporated to the constitution<sup>18</sup>.

It may also be argued that it is not the major function of the constitution to provide solutions for mediation and resolution of political (and ideological) disputes among parties. No constitution can be designed to prevent political and ideological conflicts or to effectively appease all antagonisms and tensions among political actors. After all, the traffic law cannot completely eliminate road accidents and quarrels among the drivers either. What matters most seems to be the culture of driving in case of roads, and, analogically, political culture in public sphere. So in the end we come to the same answer as the one given initially the question: is the constitution still adequate?

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<sup>18</sup> 'For instance, the Constitution does not provide an answer to the question who should assume the duties of the head of state in case, when a president as well as the chairs of the two chambers of parliament fall prey to a deadly disease at the same time. Furthermore, one will find no provision in the Constitution regarding a situation of the Constitutional Tribunal going on strike indefinitely. Moreover, what a body will the president preside over if the members of the Council of Ministers make no appearance in the meeting of the Cabinet Council' (Winczorek 2008).

## Conclusions

It might seem like a paradox but at the end of the day a dragging pace of the constitutional debate in Poland positively contributed to the quality of the final product. Certainly, one may speculate whether adoption of a constitution by a constituency elected especially and exclusively for such a purpose would have been a better solution. There are some noteworthy arguments at hand to support such a thesis. First and foremost, had the constituency been in place working solely on the constitution, then the parliament could have had focused on daily legislative process essential in the success of the socio-economic transformation. Moreover, constituency could have acquired a much more professional and less ideological profile than the parliament. All in all one might assume that the constitution would have likely been adopted sooner, had a constituency been created. However, accelerating the constitutional process might have proved a short-term gain achieved at the long-term expense of quality, integrity and stability of the constitution being carefully built over a lengthy period of time. There is a plenty of real-life evidence from other countries in the region (like Croatia, the Czech Republic, Hungary, Latvia, Romania or Slovakia) that rushing the constitutional process usually resulted in constitutions which soon required numerous amendments. So one may claim that Polish parliament did not misuse a long time the constitutional process consumed and learned some valuable lessons offered by the rich constitutionalist tradition of whole Europe, other states on the region, and finally, domestic experience as well. Putting those lessons in constitutional practice allowed for preparation of the constitution that is not considerably flawed by provisions which are not viable, hence replaceable. The advantages of the Polish constitution outlined above also prove that despite multiple allegations towards the act depicting it as an ultimate effect of the supposed 'betrayal of the elites' committed during the 'Roundtable negotiations' in 1989 and bearing a stigma of the communist past (Winczorek 1997: 16–17), it really features innovative and feasible provisions which are likely to effectively serve the state at present and in the future.

The curvy road that the national politics followed in the 1990s and early 2000s eventually led to establishment of a constitution which proved solid and not to be easily affected by ongoing swings in political climate. As successive elections at the national level, both parliamentary and presidential, were perpetuating a constant rotation in power and encouraging a string of politicians to boldly announce

inevitability of amending the constitution, it survived in a virtually untouched shape. Therefore, it seems that the major reason for such durability of Polish constitution should be sought in its very content<sup>19</sup>.

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<sup>19</sup> There is bulk of scholarly publications supporting that thesis (e.g. Podstawowe zagadnienia Konstytucji RP 1997). Furthermore, similar opinions have been expressed by constitutional experts from other states of the Central and Eastern Europe (e.g. the Czech Republic or Slovakia), who are often critical of constitutions of their own countries. See: *Politické systémy Slovenskej Republiky a Pol'skej Republiky 1999*: 7–15.

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