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The constitutionalization of political parties in Poland – evolution or change?

STUDIA I ANALIZY

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Abstract: *The article discusses the evolution of constitutional solutions concerning the issue of political groups. The subject of the analysis includes successive Polish constitutions beginning with the March Constitution¹. At the same time the development of statutory regulations referring to the functioning of political parties is shown. These Polish regulations are aligned with the European tendency to constitutionalize political parties. Although Poland experienced a delay compared to the countries of Western Europe, as a result of the nondemocratic system of the Polish People's Republic, the principle of political pluralism has been the key principle underpinning the system of government found in the Constitution of the Republic of Poland since December 1989.*

The subject of the analysis is the constitutionalization of political parties in Polish law. The analysis will cover the period of the Second Republic of Poland, the Polish People's Republic (1944–1989), and the Third Polish Republic from the beginning of political transformations

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¹ The first Polish constitution of the Second Polish Republic, modeled on the constitution of the French Republic from 1875. It introduced parliamentary system of government with weakened president power.

signaled by the ‘round table’ talks. In the beginning, it should be stated that the evolution of solutions in this respect – political parties and the perception of their place in the political system – should be seen within a broader process that considers the role of parties in the state and the implementation of proper legal and political regulations. In this respect the article will make references to the constitutionalism of Western Europe: Italy, France, and Germany after 1945. The main research question is; Did during evolution of polish constitution’s solutions, is it possible to view same solutions as West Europe? Is polish ones likely more view national solutions? In the article were used three of research methods; historical, institutional and systematical. It allowed to verify the previous research hypothesis.

K.A. Wojtaszczyk² draws attention to the fact that the legal status of political parties change together with the development of the contemporary state. Three stages can be observed in the above process: negation of political parties, their silent acceptance, and the positive regulation of the legal status of political parties. Research into the functioning of political parties in the system of the state gives three key premises: 1) a rapid population increase after 1900 and an associated increase in the number of tasks performed by the state organization, as the reason for an inevitable expansion of the apparatus of public authority; 2) an increase in the role and the importance of all-nation representations in electable bodies together with the formation of modern parliament and the importance of political parties in the legislative; 3) delayed reactions of the legislator to new social and political phenomena³. P. Winczorek⁴, on the other hand, enumerates four phases in the relationship between the state and political groups: 1) the state’s fight against political parties; 2) legislation ignoring the existence of parties; 3) silent or implicit recognition of parties and attempts to define their place in the functioning of the state (e.g. electoral procedures); 4) including regulations referring to the role of political parties in the constitutional order, and the establishment of separate statutory regulations.

The March Constitution of 1921 did not enumerate political parties as important elements of the political order. Nor did it mention the principle of political pluralism among the major principles of the state’s system of government, and the constitutional law from April 1935

² Cf. K.A. Wojtaszczyk, *Partie polityczne w państwie demokratycznym*, Warszawa 1998, p. 57.

³ Cf. A. Ławniczak, *Finansowanie partii politycznych*, Warszawa 2001, p. 9.

⁴ Cf. P. Winczorek, *Formy regulacji prawnej działalności partii politycznych w niektórych państwach burżuazyjnych*, «Państwo i Prawo» 1971, fasc. 12.

took a similar approach. The Polish constitutional legislation from 1921 instead focused on guaranteeing to every citizen the right to express freely their ideas and convictions in the way which did not violate legal provisions (art. 104 of the Constitution)⁵. There, are also guarantees for the right of combining, meeting, and forming associations and unions (art. 108 of the constitution)⁶. There are no other provisions referring to the political order in the context of parties and associations. These regulations are found in chapter five entitled *General duties and rights of citizens*. As remarked by the constitutionalist, L. Garlicki: “the traditional liberalist approach to political parties was limited to the formulation of freedom in the establishment and activity of parties and it gave but a restrictive function to the regulations of law, determining the borders beyond which political parties could not go”⁷.

A new chapter in the perception of the place and role of political parties in the constitutional order began across Western Europe after World War II. The first regulation concerning the role of political parties was placed in the Italian constitution from December 1947. After a long and stormy discussion the Constituent Assembly established the content of art. 49: “All citizens shall have the right to associate freely in political parties in order to contribute by democratic means to the determination of national policy”⁸. While analyzing the above issues, J. Zakrzewska emphasizes: “these decisions found their place in the title devoted to political relations, and not civic or moral and social relations, between the formulations regulating the electoral right, the right to petition to the parliament and the duty to defend the country”⁹. When constituting a new German state – the Federal Republic of Germany – the Basic Law of Germany from May 1949 introduced the regulation of the organization and activity of political parties in art. 21. In this respect the German legislator introduces four key principles: 1) the function of political parties was defined as, “participation in forming the political will of the people”, 2) there is freedom in how political parties are formed and their internal organization must conform to democratic principles, 3) it provides for the possibility of the delegalization of a party whose activ-

⁵ Cf. M. Szczaniecki (ed.), *Wybór źródeł do historii państwa i prawa w dobie nowożytnej. Cz. 1. Teksty do historii burżuazyjnego prawa państwowego*, Warszawa 1976.

⁶ Ibidem.

⁷ Cf. L. Garlicki, *Systemy polityczne wybranych państw kapitalistycznych. RFN*, Warszawa 1979, p. 45.

⁸ Cf. J. Zakrzewska, *Włochy. Zarys ustroju*, Wrocław 1974, p. 36.

⁹ Ibidem.

ity is 'unconstitutional', 4) the act will regulate the details in the sphere of political parties¹⁰. Art. 4 of the constitution of the French Republic from 1958, on the other hand, constitutionalizes political parties in the cautious and rather general manner, as mentioned by J. Strembowicz, by ordering them to, "respect the principles of national sovereignty and democracy"¹¹. The whole article reads as follows: "Political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry on their activities freely. They shall respect the principles of national sovereignty and democracy"¹². The above provision was introduced under the influence and on the inspiration of art. 21 of the Basic Law of the Federal Republic of Germany. As emphasized by Wiesław Skrzydło, the French regulation confirms three fundamental principles referring to the issue of political parties and their place in the state and its apparatus – 1) freedom of establishment and development of activity; 2) obligation to observe the nation's sovereignty and democracy; 3) participation in the appointment of representative organs and in expressing the nation's will by way of voting¹³.

K. Grzybowski divided legal regulations in capitalist and post-colonial states considering the states' relationship to parties as: 1) those which include general regulations establishing the place and role of parties in the state's system; 2) those which make declarations on parties in the context of the regulation of the electoral system; 3) those which include only general provisions concerning the freedom of associations; 4) those which introduce a mono-party system and which determine in detail the place and role of the governing party in the structure of the state and its apparatus; 5) those which prohibit the state's functionaries to belong to political parties¹⁴.

Attention should be paid to the process of preparing and passing separate acts referring to the activity of parties. The first of such regulations was passed in Germany in 1967. On the one hand, it meant fulfilling the constitutional declaration, and on the other – appreciating the importance of political parties in the political system of the German state. The act from 24 July, 1967 regulates two most important issues:

¹⁰ Cf. L. Garlicki, *Systemy polityczne wybranych państw kapitalistycznych*. RFN, Warszawa 1979, p. 45.

¹¹ Cf. J. Stembrowicz, *Systemy polityczne wybranych państw kapitalistycznych*. Francja, Warszawa 1977, p. 72.

¹² Cf. Konstytucja V Republiki Francuskiej, Warszawa 1997.

¹³ Cf. W. Skrzydło, A. Wojtaszczyk, *Instytucjonalizacja partii politycznych w państwach demokracji parlamentarnej*, Warszawa 1989, p. 72.

¹⁴ Cf. K. Grzybowski, *Instytucjonalizacja partii politycznych*, «Zeszyty Naukowe UJ» 1972, No. 3.

organizational and legal ones on the one hand, and the problem of party finances on the other. It is composed of seven parts, namely: general provisions; internal organization; the nomination of candidates for an election; public financing; the presentation of accounts; the implementation of bans on unconstitutional parties; final provisions¹⁵. In March 1988, on the other hand, the French parliament passed an act on political parties that regulated the way parties are financed from state resources. They have the right to acquire movable or immovable property and they can receive the financial means necessary to run political activity¹⁶.

M. Kruk¹⁷ enumerates the features of the juridization of parties characteristic of a democratic system – also called a guaranteeing type (as opposed to the limiting type). She includes the following components: 1) pluralism of the party system; 2) scope of freedom concerning membership in parties and the establishment of their links; 3) democratism and lawfulness of the objectives and methods of activity; 4) transparency of finances and ways of obtaining material means for the activity, and 5) judicial, and not administrative course of settling disputes concerning incompatibility of the party's objectives and activity with the law. As emphasized by Bogusław Banaszak¹⁸, constitutional and statutory norms referring to the issue of political parties are of general character and they are binding to all parties. In countries with a democratic system the practice of addressing constitutional norms to only one specific party does not exist.

As was emphasized by its authors, the first Polish post-war constitution from July 1952 created the foundations that underlie the state of people's democracy. We do not find there any references to the position and role of political parties although the Polish United Workers' Party (PZPR) had a hegemonic position in the political system. As T. Mołdawa, a Polish expert on the systems of government, stressed: "the state's authorities acted in a new system of parties and politics shaped in the initial period of totalitarian order (years 1948–1950). The leading role, publicly declared and recognized by other participants, was played by the PZPR, which affected not only the constitutional solutions but also the real system of

¹⁵ Cf. L. Janicki, *Podstawowe założenia ustawy o partiach politycznych*, [in:] *Partie polityczne w systemie prawnym RFN*, Poznań 1975.

¹⁶ Cf. W. Skrzydło, *Ustrój polityczny Francji*, Warszawa 1992, p. 99.

¹⁷ Cf. M. Kruk, *Instytucjonalizacja partii politycznych*, [in:] J. Trzeciński, M. Kruk, J. Wawrzyniak (eds.), *Konstytucja i władza we współczesnym świecie. Doktryna-prawo-praktyka. Prace dedykowane Profesorowi Wojciechowi Sokolewiczowi na siedemdziesięciolecie urodzin*, Warszawa 2002, p. 73.

¹⁸ Cf. B. Banaszak, *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*, Zakamycze 2004, p. 328.

relations between the highest organs of state authority (e.g. the Sejm and the Council of Ministers) and above all the mechanisms of making political decisions¹⁹. However, the existing solutions concerning the system of government in the states of Central and East Europe did not provide for the constitutionalization of political parties and the Polish basic law was no exception in this respect. The first socialist constitution, which was a novelty, was passed in Czechoslovakia (CSRS) in July 1960 without counting a constitution of USSR from 1936 (article 126) As pointed out by W. Sokolewicz²⁰, the constitution of the CSRS was, according to the intention of its authors – not only the constitution of the state but also of the whole organization of the Czech society. Hence, besides the traditional elements of the political order of the state, it comprised the status of social organizations and relations between particular links of the state apparatus. Within the subjective scope, it is worth to refer to art. 4 of the constitution from 1960. It proclaims as follows: “The guiding force in society and in the State is the vanguard of the working class, the Communist Party of Czechoslovakia, a voluntary militant alliance of the most active and most politically conscious citizens from the ranks of the workers, farmers and intelligentsia”²¹. Following the path established by the Czech constitutional lawmakers, similar constitutional regulations were prepared and passed in a succession of socialist states in the part of Europe under discussion²².

In Poland the change to the constitutional regulations in the subjective scope was prepared and passed in February 1976. As emphasized by a Polish historian A. Friszke²³: “the existing political system lasted so long that on everyday basis it did not require any justification of its existence. It was natural and obvious. As the weight of ideological justifications decreased, legal justifications of the functioning of different authorities grew in importance. That was probably the genesis of the changes introduced in the constitution of the PRL (Polish People’s Republic)”²⁴. It is also worth noting the opinion of a French historian concerned with

¹⁹ Cf. T. Mołdawa, *Konstytucyjne podstawy ustroju Polski Ludowej*, [in:] K. Rokicki, R. Spałek (eds.), *Władza w PRL. Ludzie i mechanizmy*, Warszawa 2011, p. 15.

²⁰ Cf. W. Sokolewicz, *Czechosłowacja*, [in:] A. Burda (ed.), *Konstytucje europejskich państw socjalistycznych*, Wrocław 1967, p. 75.

²¹ Cf. *Konstytucja CSRS z 11 lipca 1960 roku*, [in:] A. Burda (ed.), *Konstytucje europejskich państw socjalistycznych*, Wrocław 1967, p. 82.

²² Successively, Yugoslavia in 1963, Romania in 1965, GDR in 1968, Bulgaria in 1971, Hungary in 1972, and USSR in 1977.

²³ Cf. A. Friszke, *Polska. Losy państwa i narodu. 1939–1989*, Warszawa 2003, p. 338.

²⁴ *Ibidem*.

contemporary Polish history: “the point was to make the Constitution from 1952 similar to the constitutions of other ‘countries of people’s democracy’, where – following Moscow’s suggestion – the provision on the socialist character of the state, the leading role of the communist party and the principle of friendship with the Soviet Union was introduced”²⁵.

Article three of the amendment to the constitution from 10 February, 1976 effected the first constitutionalization of the functioning of political parties and systems in the Polish constitutional law. It was carried out in accordance with the existing practices of socialist states and its doctrine. The aforementioned article read as follows: “1. The leading political force of society in the building of socialism is the Polish United Workers’ Party. 2. Cooperation between the Polish United Workers’ Party, the United Peasant Party (ZSL) and the Democratic Party (SD) forms the basis of the National Unity Front. 3. The National Unity Front provides a common framework for the activities of social organizations of the working people and the patriotic integration of all citizens – members of the party, other political parties and non-party members, irrespective of their attitude to religion – around the vital interests of the Polish People’s Republic”²⁶.

As contemporary constitutionalists commented, the importance of the role of the ‘Marxist-Leninist party’ directly followed from the principle of the leading role of the working class in the society. According to the above doctrine, the communist party, “played the leading role in society and the supervisory role in the state”²⁷. To justify the place of the PZPR the following were enumerated: the socialist character of the system, the role of the working class and the support given by the society to the party’s program. At the same time it was emphasized that the leading role in society and the supervisory role in the state follows independently of the constitutionalization of the cited political principle. It is not the law which has created this situation, and the role of the party does not flow from the virtue of law, and instead it follows from the political system and ideological assumptions²⁸. As J. Stembrowicz²⁹,

²⁵ Cf. H. Rollet, *Zarys dziejów Polski 1939–1984*, Kraków 1994, p. 325.

²⁶ Cf. *Journal of Laws* from 1976. No. 7, item 36.

²⁷ Art. 3 of the Constitution of the Polish People’s Republic after the amendment of February 10, 1976.

²⁸ Cf. T. Fuks, A. Łopatka, M. Rybicki, W. Skrzydło, *Ustrój polityczny PRL*, Warszawa 1986, p. 70.

²⁹ Cf. J. Stembrowicz, *Konstytucja PRL z 1952 r. na tle nowelizacji 1954–1980*, [in:] M. Kallas (ed.), *Konstytucje Polski. Studia monograficzne z dziejów polskiego konstytucjonalizmu*, Warszawa 1990, p. 402.

indicates the position of the communist party was only ‘anchored’. The amendment from 1976 did not determine the principles (if only the general ones) of its activity, content, form and limits; it only declares and registers the role of the party in the state and in the society.

The amendment to the constitution made in July 1976 was a consequence of the disappearance of the National Unity Front and the establishment of a new structure, namely the Patriotic Movement for National Rebirth (PRON). Article three of the constitution acquired then a new form: “2. Alliance and cooperation of the PZPR, the ZSL and the SD in the building of socialism and their cooperation with the organizations and social associations standing on the ground of the political principles of the PRL form the basis of the PRON. 3. the PRON is the means for uniting the society for the good of the Polish People’s Republic, as well as the cooperation of political parties, social organizations and associations and citizens irrespective of their worldview – in matters concerning the functioning and strengthening of the socialist state and the all-round development of the country”³⁰. As M. Chmaj remarked, “in this way doubts referring to the character of the allied parties were removed – by defining the ZSL and the SD as political parties. The researcher emphasizes that, the principles of their mutual relations or their position in the political system of the state did not, however, change. As is emphasized, the constitutionalization of all the three legally operating political parties – the PZPR, the ZSL and the SD – took place”³¹.

The socialist system did not provide – either in a more or less authoritarian form – for the functioning of a legal opposition in the parliament, even that of a permitted minority. Major changes in this respect took place in the 1980’s. The crisis of the existing political formula started in Poland, which was reflected in a mass wave of strikes and the resulting establishment of independent and self-governing trade unions *Solidarność* (Solidarity). Even the introduction of martial law in December 1981 did not consistently and permanently change the internal situation, except for delegalization of some social and political organizations, including Solidarity. At this point it should be remembered that Solidarity had never declared itself a political party. Instead, it performed the tasks of a trade union and a social movement. In the atmosphere of social and political awakening in autumn 1981, certain forms of political clubs, the nuclei of the future political parties, began to get shaped. In

³⁰ Cf. T. Mołdawa (comp.), *Konstytucje polskie 1918–1998*, Warszawa 1999, p. 281.

³¹ Cf. M. Chmaj, *Wolność tworzenia i działania partii politycznych. Studium porównawcze*, Olsztyn 2006, p. 50.

this context Kluby Służby Niepodległości (Clubs to Serve the Independence) and Kluby Samorządnej Rzeczypospolitej Wolność, Suwerenność, Niepodległość (Clubs of Self-Governing Republic of Poland Freedom, Sovereignty, Independence) should be enumerated. For obvious reasons they did not, however, develop their activity³².

Of groundbreaking importance were the decisions from the autumn of 1988 on the commencement of negotiations between the authorities and a part of the opposition circles concentrated around the first Solidarity leader Lech Wałęsa. The principal step on this path were the decisions of the 10th plenum of the Central Committee of the PZPR on pluralism in politics and in the trade unions. It was written: “The Central Committee finds it necessary to determine a new formula of shaping political pluralism. Its realization will promote the strengthening of a democratic socialist state ruled by law and corresponding to people’s needs and aspirations to civic co-responsibility”³³. It was characteristic that at that time it was still assumed that there was a possibility of implementing ‘socialist pluralism’ within the existing political and economic reality. The consequence of this were the ‘Round table’ talks and the elections to the Sejm and Senate assigned for 4 and 18 June, 1989. Political groups, even those that were not connected with the Solidarity movement, began legal activity – Konfederacja Polski Niepodległej (Confederation of Independent Poland), Polskie Stronnictwo Ludowe (Polish People’s Party), Stronnictwo Pracy (Labour Party), Polska Partia Socjalistyczna (Polish Socialist Party), or Stronnictwo Narodowe (National Party)³⁴. Eugeniusz Zieliński suggests that the process of political transformation in Poland after 1989 comprised of a few levels, namely: 1) movement from authoritarianism and towards democratic authority; 2) movement from a monopolist party system towards a multi-party system; 3) movement from the party nomenklatura to a pluralist political elite³⁵. This conclu-

³² Cf. J. Holzer, *Solidarność 1980–1981. Geneza i historia*, Paryż 1984, p. 332; A. Friszke, *Rewolucja Solidarności 1980–1981*, Kraków 2014; W. Bogaczyk, *Marzyciele i rewolucjoniści*, „Rzeczpospolita”, 25.03.2012.

³³ Cf. X Plenum KC PZPR (grudzień 1988 – styczeń 1989). *Dokumenty i materiały. Seria: Polska mniej znana 1944–1989*, [eds.] M. Jabłonowski, W. Janowski, G. Sołtysiak, Warszawa 2018, *Partia w przemianach – przemiany w partii. 20–21.12.1988, 16–18.01.1989. Podstawowe materiały i dokumenty*, Warszawa 1989.

³⁴ Cf. K. Sobolewska-Myślik, *Partie i systemy partyjne Europy Środkowej po 1989 roku*, Kraków 1999; K. Kowalczyk (ed.), *Partie i system partyjny III RP*, Toruń 2011; A. Antoszewski, R. Herbut, W. Jednaka, *Partie i system partyjny w Polsce; pierwsza faza przejścia ku demokracji*, Wrocław 1993.

³⁵ Cf. E. Zieliński, *Proces przeobrażeń ustrojowo-politycznych*, [in:] E. Zieliński (ed.), *Przeobrażenia ustrojowe w Polsce*, Warszawa 1993, p. 8.

sion is supplemented by the opinion expressed by A. Bałaban³⁶, who emphasizes that the principle of political pluralism meant the elimination of the statistical picture of the pro-state parties which performed the role of a super-office. Such was the practice of the functioning of the PZPR as a mono-party in the conditions of the political system of the Polish People's Republic until August 1989³⁷.

On 29 December, 1989 the Sejm made a thorough revision of the constitution of the PRL from 22 July, 1952. Chapter four of the constitution was basically changed to the following: "1. Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means. 2. The Constitutional Tribunal shall adjudicate the conformity to the Constitution of the purposes or activities of political parties"³⁸. As A. Ajnenkiel³⁹ indicates, the constitutional amendment from December came into life when the block of real socialism countries collapsed in Central Europe. The amendment created a hybrid model of constitutional order from the old regulations from the Stalinist times (the period when the basic law was created) and new provisions which were not always implemented in a consistent way. Against this background, the principle of political pluralism, which informed the building of a government system of a democratic state, came to the fore. The principle of political pluralism consists in recognizing two complementary levels: the first one, assumes the existence of a multitude of political views, and the second, includes a multitude of political parties and organizations. Research into the system of government emphasizes that the above principle is directly connected with the idea of individual freedom and the idea of equality towards law⁴⁰.

M. Granat⁴¹ draws attention to two ways of understanding the realization of the principle of political pluralism. *Sensu stricto* which means the premise of the existence of many different parties. The principle of political pluralism *sensu largo*, on the other hand, also comprises the

³⁶ Cf. A. Bałaban, *Funkeje zasad naczelnych konstytucji*, «Studia Iuridica» 1995, vol. 28, p. 26.

³⁷ Communist parties in the other people's democracy countries, and from the 1960's – socialist countries, functioned in a similar way.

³⁸ Cf. T. Mołdawa (comp.), *Konstytucje polskie 1918–1998*, Warszawa 1999, p. 344.

³⁹ Cf. A. Ajnenkiel, *Konstytucja Polski w rozwoju dziejowym. 1791–1997*, Warszawa 2001, p. 350.

⁴⁰ Cf. W. Skrzydło, S. Grabowska, R. Grabowski (eds.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warszawa 2009, p. 717.

⁴¹ Cf. M. Granat, *Sądowa kontrola konstytucyjności prawa w państwach Europy Środkowej i Wschodniej*, Warszawa 2003, p. 40.

freedom of citizens associating in trade unions, associations and other social organizations.

The constitutional norm was completed by the law on political parties (28 July, 1990)⁴². Concerning the creation of political parties, it ensured the free establishment of parties in accordance with the registration system. According to the adopted legal regulations, registered parties (i.e. those reported to the registers kept by the Voivodship Court in Warsaw) and non-registered groups (i.e. those that are not reported to the registers) could function in Poland. Non-registered parties, a party without legal personality, remained legal, but they were deprived of certain benefits from having a legal personality, e.g. the possibility of opening a bank account or concluding a tenancy agreement for party premises on one's own account⁴³. Deputy A. Dynowska (from the Democratic Party, mover of a private member's bill) emphasized in a plenary debate that the statutory regulation of the issue of political parties followed from the experiences of the past. She spoke from the Sejm tribune: "we believe that coming from a totalitarian system and having no special good experiences in the field of the functioning of political pluralism, we should settle the matter in a law"⁴⁴. At the same time she drew attention to the fact that the problems connected with the functioning of political parties refer to 1) the legal personality of political parties; 2) the scope of protection of subjective rights of political parties; 3) the right to the name of the party and the right to use the party symbols⁴⁵.

When presenting a government proposal, minister A. Hall, on the other hand, emphasized the importance of the establishment of legal foundations for the development of political pluralism. He said: "I am convinced that pluralism gives a possibility of participating in public life to many political organizations which have different ideological and program propositions, this is not only the problem of political freedom, this is also the condition, the basis of a civil state"⁴⁶. The minister declared that the legal procedure for the establishment of a party should have a fully liberal, and nonrestrictive character and he referred to the periods when the freedom of associations was blocked in Poland. Hence, the government proposal provided for the adoption of a submission procedure

⁴² Journal of Laws from 1990. No. 54, item 312.

⁴³ Cf. W. Sokół, M. Żmigrodzki (eds.), *Współczesne partie i systemy partyjne. Zagadnienia teorii i praktyki politycznej*, Lublin 2005, p. 280.

⁴⁴ Cf. A shorthand records from the 18th sitting of the Sejm on 18 January, 1990, ł. 54.

⁴⁵ *Ibidem*.

⁴⁶ *Ibidem*, ł. 74.

as – in the opinion of the authors – most fully corresponding to the idea of the freedom of associations⁴⁷. As K.A. Wojtaszczyk⁴⁸ remarked, its enigmatic and vague normative regulations had a significant effect on the formation of the party system. The second direct consequence of the adopted measures was the lack of deeper interference into the way political parties are organized and a small minimum membership. M. Walecki⁴⁹ underlines that the adoption in the statutory regulation of the principle that party groups should not be directly financed from the state budget was to lead to the weakening of the existing political parties which had functioned since the PRL period. This is not a completely true thesis as this way of financing party activity first of all weakened the new parties, particularly those that came from the Solidarity movement. The parties that continued their activity after the Polish People's Republic period were in a better financial condition, possessing numerous properties.

In the process of creating the constitution in the years 1993–1997 the issue of political pluralism was treated with due respect. Political pluralism was recognized as one of the most fundamental principles in the system of government of a democratic state. As M. Gulczyński⁵⁰ rightly reminded us: a *sine qua non* condition of a democratic system is political pluralism. It assumes constitutional recognition of three key principles, namely 1) a pluralism of interests, views and aspirations of the society; 2) the citizens' right to establish parties; 3) an equal right of each party to seek citizens' support, which is necessary to achieve a significant influence on the power in the state. Respective regulations are found in two articles of the constitution from 1997 – numbers eleven and thirteen. It can be said that they are a creative extension of the legal and political regulations from December 1989 that were passed at the beginning of the process of political transformations in Poland. P. Winczorek⁵¹ emphasizes that in democratic party systems the fundamental principle allows for alteration of political parties in the process of exercising power in the state. This is a natural consequence of political pluralism, free univer-

⁴⁷ Ibidem.

⁴⁸ Cf. K.A. Wojtaszczyk, *Partie i stronnictwa w strukturze politycznej państwa*, [in:] E. Zieliński (ed.), *Przeobrażenia ustrojowe w Polsce*, Warszawa 1993, p. 94.

⁴⁹ Cf. M. Walecki, *Geneza finansowania partii politycznych w Polsce*, [in:] M. Walecki (ed.), *Finansowanie polityki. Wybory, pieniądze, partie polityczne*, Warszawa 2000, p. 61.

⁵⁰ Cf. M. Gulczyński, *Zasada pluralizmu politycznego*, [in:] W. Sokolewicz (ed.), *Zasady podstawowe polskiej konstytucji*, Warszawa 1998, p. 176.

⁵¹ Cf. P. Winczorek, *Nauka o państwie*, Warszawa 2011, p. 260.

sal elections and the observance of the right of association, freedom of speech or freedom of assembly.

Art. 11 provides as follows: “1. The Republic of Poland shall ensure freedom for the creation and functioning of political parties. Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means. 2. The financing of political parties shall be open to public inspection”⁵². The above regulations should be interpreted together with the next article of the constitutional law. Art. 13 declares: “Political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of Nazism, Fascism, and Communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited”⁵³. L. Garlicki⁵⁴ remarks that a democratic state must sanction and guarantee the existence of political pluralism. The freedom of shaping and functioning parties is an expression of civil liberties of special importance both for the state and the society itself.

We will now analyze the drafts of the basic law submitted to the Constitutional Commission in 1993 from the point of view of legal regulations referring to the functioning of political parties. The draft of the Constitutional Commission of the Senate of the first term of office includes art. 7, which read as follows: “political parties, civil movements and other groups functioning on the basis of the principle of political pluralism are a form of voluntary and equal political participation in the shaping and expressing of the citizens’ will and their influence on the state’s policy”⁵⁵.

The proposal submitted by the SLD, on the other hand, defined political parties as “associating the citizens of the RP (Republic of Poland) on voluntary and equal principles with the aim of influencing the state’s policy by democratic means”. At the same time the Constitutional Tribunal was equipped with the competences of adjudicating

⁵² Journal of Laws from 1997. No. 78, item 483.

⁵³ Ibidem.

⁵⁴ Cf. L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2009, p. 64.

⁵⁵ Cf. R. Chruściak (comp.), *Komisja Konstytucyjna Zgromadzenia Narodowego. Projekty konstytucji*, Warszawa 1993, p. 3.

on compatibility of the goals or activity of parties with the Constitution (art. 5)⁵⁶.

The proposal of the Democratic Union included art. 7, which declared that, “political parties associate the citizens of the RP on voluntary and equal principles with the aim of influencing the public authority by democratic means”⁵⁷.

A common proposal submitted by the parliament members of the PSL and the Labour Union said that, “political parties associate the citizens of the RP on voluntary and equal principles with the aim of influencing the state’s policy by democratic means” (art. 10)⁵⁸.

The proposal submitted by the President of the RP Lech Wałęsa declared in its art. 8: “The Republic of Poland guarantees the freedom of establishment and activity of political parties. Financing political parties is transparent and subject to judicial control”⁵⁹.

On the other hand, the proposal submitted by deputies from Porozumienie Centrum (Agreement Center) read that, “citizens have the right to organize themselves in political parties in order to participate in expressing the citizens’ will and influencing public life”. Regarding detailed regulations, the constitutional law maker referred to the provisions of statutory rank⁶⁰.

It deserves to be stressed that the proposal submitted by Konfederacja Polski Niepodległej did not provide any separate article dedicated to political parties. Nevertheless, as cardinal rights it included the right of association and the freedom of assembly (art. 21)⁶¹.

The second, more detailed act referring to the principles of establishing political parties and their functioning was passed on 27 June, 1997⁶². It defines parties as 1) social organizations based on individual membership; 2) existing under a definite name which should differ from the names of other parties (including the abbreviation of the name and the graphic symbol); 3) basing their activity on voluntary membership of their members; 4) basing their activity on the equality of all members; 5) setting the task of participating in public life and influencing the state’s policy or the public authority by democratic means⁶³. Legal

⁵⁶ Ibidem, p. 23.

⁵⁷ Ibidem, p. 41.

⁵⁸ Ibidem, p. 53.

⁵⁹ Ibidem, p. 68.

⁶⁰ Ibidem, p. 98.

⁶¹ Ibidem, p. 83.

⁶² Journal of Laws from 1997. No. 98, item 604.

⁶³ Cf. P. Sarnecki (ed.), *Prawo konstytucyjne RP*, Warszawa 2002, p. 95.

regulations refer to the requirements set before parties in the field of their functioning. These requirements concern the following issues: 1) the structure and principles of the party's activity should agree with the principles of democracy; 2) transparency of structures; 3) appointment of the party's organs by way of elections; 4) decisions made by a majority of votes⁶⁴. As M. Grabowska⁶⁵, a sociologist of politics, who studies the Polish political scene concluded, the new regulations – the electoral system from 1993 and then the act on political parties from 1997 – formulated new rules of the functioning of the political scene. That was characterized by raising the requirements addressed to parties: 1) those concerning the registration of political parties and their statutes; 2) those concerning submitting the lists of candidates. On the one hand, it ensured that the groups with a stable position had a privileged position in electoral competition.

The constitutional lawmaker made the party statute the most important document determining the rules of the functioning and the organizational structure of political groups. Its tasks include the definition of party organs, ways of acquiring and losing membership, rights and duties of the members, rules of financing the party, the way of creating and abolishing the local structures of parties⁶⁶.

The constitutional lawmaker decided that the registration of a party should enclose a list of names, surnames and addresses, PESEL⁶⁷ numbers and signatures of at least 1,000 persons supporting the application who are 18 years of age or older and who have full legal capacity⁶⁸. At the same time the statutory regulation provides that the provisions of the act from 5 July, 1990 – the law of assemblies are applicable to the collection of signatures of persons supporting the application⁶⁹.

At the same time attention should be paid to the evolution of the regulations referring to the financing of political parties. Initially, the provisions from July 1990 were very liberal in this respect (they did not interfere too much in this matter). They were expanded in the second act

⁶⁴ W. Sokół, M. Żmigrodzki (eds.), *Współczesne partie i systemy partyjne. Zagadnienia teorii i praktyki politycznej*, Lublin 2005, p. 294.

⁶⁵ Cf. M. Grabowska, *Partie polityczne w III Rzeczypospolitej*, [in:] A. Kostarczyk (ed.), *III Rzeczypospolita w trzydziestu odślonach. Nadzieje i rozczarowania po 1989 roku*, Warszawa 2004, p. 421.

⁶⁶ Cf. T. Bichta, *Struktura organizacyjna partii politycznych w Polsce po 1989 roku*, Lublin 2010, p. 75.

⁶⁷ The PESEL number is the registration number of every Polish citizen.

⁶⁸ Cf. M. Chmaj, *Wolność tworzenia i działania partii politycznych...*, p. 70.

⁶⁹ Journal of Laws No. 51, item 297.

from June 1997, especially in the amendments from April and December 2001 and next in July 2002. Analysis of the functioning of political parties emphasized, the possibility of acquiring finances from private sources was limited and gradually budgetary subsidies were introduced⁷⁰.

Conclusion

Summing up, the significant progress made in the establishing of the constitutionalization of political parties in Polish law should be noted. From the perspective of the school of liberal society the freedom of associating in political parties is connected with the categories of civil rights and freedoms. This stands in contrast to the period of the communist government, which was not conducive to regulating the issue of political parties, and instead saw an actual monopoly of one governing group (casus PZPR). In 1976 – on the wave of the process of amending the constitutions in other socialist countries – the Polish constitutional lawmaker included regulations referring to the so-called supervisory role of the Communist party. It was not until the democratic breakthrough, symbolized by the year 1989, when it was made possible to regulate the issues pertaining to the establishment and functioning of political parties according to the principles of political pluralism. The will of the lawmaker was realized by the simultaneous preparation of the law on political parties from July 1990. It is worth noting the regulations concerning the way parties are registered: a very liberal choice of application which – in the intention of the authors – was supposed to promote the process of pluralization of the political scene. The constitutional practice of the 1990's (more than 300 registered parties, unregulated issues of financing the parties, the ease of establishing parties) resulted in the necessity refining the regulation, and the second act was passed in June 1997. Its provisions were more restrictive in the context of establishing a party (1,000 signatures instead of 15) and more detailed in the sphere of financing political parties. The lawmaker decided to adopt the subsidization of political parties from the state's budget, whose aim was to limit opaque contacts between politicians and business circles. This solution of law did not excepted the pathologic relation between business and

⁷⁰ Cf. R. Glajcar, J. Okrzesik, W. Wojtasik, *Ustrój polityczny RP. Wprowadzenie*, Bielsko-Biała 2006, pp. 63ff.; M. Walecki (ed.), *Finansowanie polityki. Wybory, pieniądze, partie polityczne*, Warszawa 2000, pp. 48ff. and M. Chmaj, *Wolność tworzenia i działania partii politycznych...*, pp. 117ff.

politic area. It needs to be emphasized that in the subjective scope, the Polish legislator went along the path of legal regulations adopted by the majority of European states, including the so-called young democracies from the region of Central Europe.

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