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## Constitutional amendments in Poland between 1997–2019

STUDIA I ANALIZY

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**Abstract:** *The aim of this article is to analyze parliamentary and non-parliamentary amendments to the Constitution of Poland in the years 1997–2019. The solutions and proposals for amendments, which are in chronological order by parliamentary (Sejm) session, are analysed in detail. These years determined not only the scope of the changes undertaken but above all, they were the main reason for the increased and variable activity of political entities related to the presentation of a comprehensive vision of the form of ready-made drafts of the Polish Constitution.*

### Introduction

The adoption of the Constitution of the Republic of Poland by the National Assembly on 2 April 1997 and its subsequent approval by the public through a nationwide referendum did not end the discussion on the necessity of further changes to the Basic Law of Poland. This ‘constitutionalization’ of the state system – as Maria Kruk aptly called it – was a natural process that flowed from the principles and provisions of the Constitution in its daily practice, the developments in legislation, judicial

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and constitutional case law, as well as in the scope of proposed changes that suggested, “the process of shaping the state system is not completed and requires further work [...] towards modification or optimisation”<sup>1</sup>.

It should be remembered that the enactment of the Constitution of the Republic of Poland was accompanied by a range of social, political, cultural and even economic disputes, that reflected conflicting world views. All these factors significantly influenced the course of the parliamentary discussions on the new Basic Law. This debate concerned both the values and shortcomings of the Constitution, each has its ardent supporters and strong opponents<sup>2</sup>. A clear aspiration, especially of the latter group, is not only a fundamental change of the Constitution but its repeal and the adoption of a new fundamental law based on significantly different assumptions and systemic solutions<sup>3</sup>.

The subject of this article is an analysis of the activities undertaken to amend the Polish Constitution in the years 1997–2019.

## Constitutional amendments in the years 1997–2001

Even before the parliamentary elections in 1997, the Akcja Wyborcza Solidarność (AWS) and the Ruch Odbudowy Polski (ROP) stressed the need for radical changes to the Constitution, including its complete repeal and replacement by a civic project submitted to the Constitutional Committee of the National Assembly back in 1994. However, due to the AWS participating in a coalition government with the Unia Wolności (UW), the announced intentions were not implemented. This was also due to the lack of the required constitutional majority in parliament.

The period of the third term of the Sejm (1997–2001) was characterised by the submission of two bills to amend the Constitution by AWS Members of Parliament. The first one, submitted on November 10<sup>th</sup> 1997, sort to amend article 105, which related to parliamentary immunity, while the second one, submitted on January 11<sup>th</sup> 2000, sort to amend article 227, which related to equipment granting the bodies of

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<sup>1</sup> M. Kruk, *Propozycje zmian Konstytucji RP z 1997 r. Próba klasyfikacji*, [in:] R. Chruściak (ed.), *Problemy zmiany konstytucji*, Warszawa 2017, p. 55.

<sup>2</sup> J. Jaskiernia, *Spoleczna percepcja Konstytucji RP z 1997 r.*, «Przegląd Sejmowy» 2017, nr 5, pp. 70–71.

<sup>3</sup> R. Chruściak, *Prace parlamentarne nad zmianą i inicjatywami zmian w Konstytucji RP w latach 1997–2007*, [in:] W. Jakubowski, T. Słomka (eds.), *Porządek konstytucyjny w Polsce*, Warszawa–Pułtusk 2008, pp. 137.

the National Bank of Poland (NBP) the right to issue regulations<sup>4</sup>. As substantive work was not conducted on the submitted proposals, they were not carried out, and ultimately did not formally lead to changes in the Constitution. It should be stressed from a formal point of view that they were officially announced in the Prime Minister's Notice of 26 March 2001<sup>5</sup>.

Also in 2001, Stronnictwo Konserwatywno-Ludowe (SKL) opted that the provision on elections proportional to the Sejm should be deleted from the Basic Law and replaced by a majority, majority and proportional elections or, as Arkadiusz Lewandowski pointed out, by a majority and proportional and majority electoral law to the Sejm<sup>6</sup>. This AWS-SKL proposal did not gain support from other parties sitting in the Sejm of the third term of office, and so the proposal failed<sup>7</sup>.

## Constitutional amendments in the years 2001–2005

In the years 2001–2005, i.e. in the fourth term of the Sejm, there was only one proposal to amend the Constitution of the Republic of Poland. This concerned the right to stand for election to the Sejm and Senate, and the removal of the right to immunity from prosecution for members of the Sejm and the Senate<sup>8</sup>. The preliminary draft of proposed amendments (working draft) and the scope of the proposed considerations were put forward by Members of the Sojusz Lewicy Demokratycznej (SLD) in December 2004. These amendments were the result of negative developments concerning the election to parliament by people who were in conflict with the law, and who used the protection of the status as

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<sup>4</sup> Druk sejmowy nr 72; druk sejmowy nr 1890.

<sup>5</sup> Obwieszczenie Prezesa Rady Ministrów z dnia 26 marca 2001 r. o sprostowaniu błędów (Dz.U. Nr 28, poz. 319).

<sup>6</sup> A. Lewandowski, *Akcja Wyborcza Solidarność: centroprawica w poszukiwaniu modelu współpracy*, Płock 2016, p. 213.

<sup>7</sup> W. Tomaszewski, *Proces przygotowania i uchwalenia Konstytucji RP z 2 kwietnia 1997 roku w aspekcie doświadczeń ustrojowych oraz prac nad nową konstytucją*, Olsztyn 2018, p. 129; S. Gebethner, *Wybory do Sejmu i Senatu: komentarz do ustawy z dnia 12 kwietnia 2001 r. – Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i Senatu Rzeczypospolitej Polskiej*, Warszawa 2001, pp. XVII–XX.

<sup>8</sup> M. Granat, *Uwagi do projektu ustawy o zmianie Konstytucji Rzeczypospolitej Polskiej zgłoszonego w 2004 r.*, «Zeszyty Prawnicze Biura Studiów i Ekspertyz Kancelarii Sejmu» 2005, Nr 2, pp. 47–52.

member of parliament to avoid legal liability<sup>9</sup>. In the end, no legislative initiatives to amend the Basic Law were tabled in the 4<sup>th</sup> Sejm.

It is worth noting, however, that in the years 2001–2005 a broad constitutional debate was held, which was one of the major areas of debate between the parties. In 2003, on the anniversary of the adoption of the 3<sup>rd</sup> of May Constitution, Prawo i Sprawiedliwość (PiS) presented 12 constitutional theses which, according to Jarosław Kaczyński, were to constitute the foundation of the Fourth Republic and its new constitution based on Christian values. These changes included the strengthening of executive power, a change in the casting of judges' privileges, the abolition of the casting of positions in the NBP, the Monetary Policy Council, the National Broadcasting Council (KRRiT), and the Constitutional Tribunal. These issues were discussed in detail during the Constitutional Convention on Law and Justice held on the 20<sup>th</sup> of September 2003<sup>10</sup>.

In August 2004, the draft constitution prepared by Samoobrona was presented for the first time<sup>11</sup>. It consisted of a preamble, 13 chapters and 224 articles. The preamble began with the words, "We, the Polish Nation", and contained a direct reference to the universal values contained in the slogan "God, Honor, Fatherland". The distinguishing feature of the draft constitution was the abolition of the Senate, the maintenance of the strong constitutional position of the President of the Republic of Poland, as well as extensive property rights, including the protection of land rights. The issue of family farms as the basis of the agricultural system was also addressed. Military service and the obligation to participate in a referendum were introduced<sup>12</sup>. According to W. Tomaszewski, this constitutional obligation involved referendums, but also elections, and its purpose was to increase the importance of direct democracy, and eliminate the repeated accusations of that parliament lacked legitimacy<sup>13</sup>.

One of the major campaigns to revise the Constitution of the Republic of Poland was inaugurated by the Platforma Obywatelska (PO) on 12 September 2004. It was conducted under the slogan, "Say 4 × YES to Poland", and its aim was to collect 500 thousand signatures to support the motion to hold a political referendum on four changes to the Con-

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<sup>9</sup> R. Chruściak, *Prace konstytucyjne w latach 1997–2007*, Warszawa 2009, pp. 25–26.

<sup>10</sup> *Konwencja konstytucyjna Prawa i Sprawiedliwości. Wystąpienie prezesa PiS Jarosława Kaczyńskiego*, Warszawa 20.09.2003.

<sup>11</sup> In print, this draft was published on 19 December 2004.

<sup>12</sup> *Konstytucja Rzeczypospolitej Polskiej. Projekt Samoobrony RP*, Warszawa 19.12.2004.

<sup>13</sup> W. Tomaszewski, *Proces przygotowania i uchwalenia Konstytucji RP...*, p. 130.

stitution. PO politicians demanded at that time that the Senate be abolished, the number of Members of Parliament be halved, single-member constituencies be introduced in elections to the Sejm and parliamentary immunity be lifted<sup>14</sup>. The campaign ended on the 20<sup>th</sup> of January 2005 when the then Speaker of the Sejm, Włodzimierz Cimoszewicz, was given a petition supporting the proposed constitutional revision, that had been signed by 750 thousand Polish citizens<sup>15</sup>. Another initiative by PO that was undertaken in December 2005 was to announce a report entitled *State for Citizens*. The Governance Plan 2005–2009 (*Państwo dla Obywateli. Plan rządzenia 2005–2009*), the results of a two-year work of a team of experts led by Jan Maria Rokita, who assumed that he would become the next Prime Minister, as the opinions polls indicated that PO had significant support during the parliamentary campaign in 2005. The report contained numerous annexes of legal acts to be adopted, including a Draft Constitutional Act to amend the Constitution of the Republic of Poland and a Draft Constitution of the Republic of Poland – uniform text<sup>16</sup>. The scope of the proposed changes was extensive and included proposals to amend 66 articles of the Constitution of the Republic of Poland, delete 11 of them and add 6 new ones, while the uniform draft of the Basic Law prepared by PO consisted of a preamble, 13 chapters and 238 articles. This draft reiterated all the assumptions presented in the “Say 4 × YES to Poland” campaign<sup>17</sup>.

On 19 March 2005, during the PiS election convention, at which the President of Warsaw and Honorary Party President Lech Kaczyński announced his intention to run for the office of President, an official draft of the Constitution was presented, it had been prepared under the supervision of Law and Justice Vice-President Kazimierz Michał Ujazdowski. It consisted of a preamble, 14 chapters and 170 articles. The preamble specified *invocatio Dei* and the reference to Divine Providence. The project envisaged, among other things, the strengthening the role of the President; reducing the number of MPs to 360, and the number of senators to 30 elected in single-mandate constituencies; replacing the National Broadcasting Council (KRRiT) with a single-mandate and

<sup>14</sup> PO 4 razy „tak”, <https://www.wprost.pl/kraj/66636/PO-4-razy-tak-aktl.html> (13.12.2019).

<sup>15</sup> P. Wroński, *Platforma zakończyła akcję 4 razy tak. Chce nowej konstytucji w 2007 r.*, <http://wiadomosci.gazeta.pl/wiadomosci/1,53600,2504881.html> (13.12.2019).

<sup>16</sup> J. Kuciński, *Koncepcje zmian i przekształceń ustrojowych w pozaparlamentarnych projektach konstytucji RP ogłoszonych w latach 2004–2013*, Łódź–Warszawa 2015, p. 19.

<sup>17</sup> Ibidem, pp. 19–20; K. Kowalczyk, *Platforma Obywatelska Rzeczypospolitej Polskiej – „partia ludzi sukcesu”*, [in:] K. Kowalczyk (ed.), *Partie i ugrupowania parlamentarne III RP*, Toruń 2006, pp. 110–114.

cadence office appointed by the President; abolishing the MPC or replacing the Ombudsman with a specially established Office for Assistance to the Victims of Lawlessness. The draft Basic Law included the vetting of people holding public functions, performing public trust professions, university lecturers, people on the boards of companies with State Treasury shareholding<sup>18</sup>.

Another political group that officially presented its draft constitution was the Liga Polskich Rodzin (LPR). As with the Law and Justice party, the presentation of the draft constitution of the Fourth Republic of Poland coincided with Maciej Giertych's announcement of his intention to run for the office of President of the Republic of Poland on the 17<sup>th</sup> of May 2005. This draft consisted of a preamble, 13 chapters and 234 articles. The preamble contained a reference to God, a reference to the best traditions of the First and Second Polish Republics and good achievements of the Third Polish Republic; the inborn dignity of man was also underlined.

The draft Constitution of the LPR proposed a broad system of protection of civil liberties, safeguards for human rights, family and marriage (understood as a relationship between a woman and a man), including the legal protection of life from natural conception to natural death<sup>19</sup>. The primacy of the full independence and autonomy of the Catholic Church was recognized in the draft law. The distinguishing feature of the LPR project was the limitation of the number of Members of Parliament to 360 and the reduction of the term of the Sejm to 4 years, while in the case of the Senate the number of senators was unchanged and amounted to 100, with the term of office being 6 years. There was a preference for the strengthening of the position of the president elected for a 6-year term. The novelty of the LPR project was the creation of the office of vice-president, who at the same time served as Speaker of the Senate<sup>20</sup>.

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<sup>18</sup> *Konstytucja Rzeczypospolitej Polskiej. Projekt Prawa i Sprawiedliwości*, 2005, [https://web.archive.org/web/20050421212615/http://www.pis.org.pl/dokumenty/projekt\\_konstytucji.pdf](https://web.archive.org/web/20050421212615/http://www.pis.org.pl/dokumenty/projekt_konstytucji.pdf) (15.12.2019).

<sup>19</sup> A broad discussion of the draft constitution of the LPR can be found in the publication: T. Koziello, *Mysł polityczna Ligi Polskich Rodzin (2001–2009): narodowa wizja państwa, społeczeństwa i polityki*, Rzeszów 2017, pp. 231–301.

<sup>20</sup> *Konstytucja IV RP: Liga Polskich Rodzin*, Warszawa 2005.

## Constitutional amendments in the years from 2005–2007

In the years 2005–2007, in the period of the shortened term of the Sejm, seven bills were submitted with the aim of amending the Basic Law, only one of them resulted in the adoption of an Act that amended the Constitution of the Republic of Poland. This formally took place on the 8<sup>th</sup> of September 2006<sup>21</sup>. The basis for the amendment was a Bill that was submitted to the Sejm on May 15, 2006 by the President of Poland, Lech Kaczyński. The draft assumed the modification of article 55 of the Constitution of the Republic of Poland by removing, “the accusation of unconstitutionality of a part of the provisions of the Code of Criminal Procedure (CPC) that defined the procedures for extradition of a Polish citizen based on the European Arrest Warrant (EAW) that had been adopted by the Polish legal system in 2004”<sup>22</sup>.

The remaining reforms, even though they were discussed at length, did not finally result in a change to the Constitution. *The first* of these proposals which was submitted on September the 7<sup>th</sup> of 2006 by the Members of Parliament of the PiS, LPR, Samoobrona and the Polskie Stronnictwo Ludowe (PSL), concerned the modification of the content of article 38 of the Constitution of the Republic of Poland, which guarantees the legal protection of life to every human being. The change consisted in adding the legal protection of a human being from the moment of conception<sup>23</sup>. *The second* proposed change to the constitution was submitted to the Sejm on 12 December 2006 by Members of Parliament of the PO and PSL proposed a supplement to article 99 of the Constitution of the Republic of Poland with a new paragraph 3, in which it was proposed that, “a person punished for an intentional crime prosecuted by public indictment and a person against whom a final and binding verdict conditionally discontinuing criminal proceedings for committing an intentional crime prosecuted by public indictment may not be an MP and Senate”<sup>24</sup>. *The third* proposed change to the constitution was submitted by the President of the Republic of Poland to the Sejm on 30 March 2007 and contained a proposal to amend article 179 of the

<sup>21</sup> R. Chruściak, *Projekty ustaw dotyczące zmian w konstytucji (przepisach konstytucyjnych) w latach 1989–2009*, [in:] M. Zubik (ed.), *Dwadzieścia lat transformacji ustrojowej w Polsce: 51. Ogólnopolski Zjazd Katedr i Zakładów Prawa Konstytucyjnego*, Warszawa, 19–21 czerwca 2009 r., Warszawa 2010, pp. 343–344.

<sup>22</sup> *Zmiany Konstytucji Rzeczypospolitej Polskiej w latach 1997–2011 w świetle projektów ustaw oraz uchwalonych nowelizacji*. Opracowania tematyczne. OT-605, Warszawa 2011, p. 5.

<sup>23</sup> Druk sejmowy nr 993.

<sup>24</sup> Druk sejmowy nr 1302.

Constitution of the Republic of Poland by introducing a new institution into the constitutional order, namely a judge appointed by the President of the Republic of Poland on the motion of the National Council of the Judiciary for a fixed period of two to four years. This judge was to replace the existing institution of the judicial assessor<sup>25</sup>.

*The fourth* proposed change to the constitution was submitted to the Sejm on 17 April 2007 by PiS. It provided for the amendment of Article 99 of the Constitution of the Republic of Poland by adding a new paragraph 3, in which stated that: “The Act specifies cases in which, due to committing an intentional crime or fiscal offence prosecuted by public prosecution, the right to be elected to the Sejm or Senate is lost or the mandate of a Member of Parliament or Senate expires”<sup>26</sup>. *The fifth* proposed change to the constitution, which was an expression of the special activity of PiS in the fifth term of the Sejm, was submitted on April 11, 2007. This draft referred to a change in the content of Article 105 of the Constitution of the Republic of Poland by maintaining so far the protection of MPs and senators from being held liable for activities falling within the scope of their mandate (the so-called material immunity), while the scope of formal immunity regulating the criminal liability of parliamentarians was to be limited<sup>27</sup>.

*The sixth* and last of the submitted drafts of the Act amending the Constitution of the Republic of Poland was submitted to the Sejm on 8 May 2007 by PO. It contained a draft of the new wording of article 105 of the Constitution of the Republic of Poland relating to the issue of parliamentary immunity. This proposal stated: “A Member of Parliament may not be detained or arrested without the consent of the Sejm, except for being caught in the act of committing an offence and if his detention is necessary to ensure proper conduct. The Speaker of the Sejm shall be immediately notified of the detention, who may order the immediate release of the detainee”<sup>28</sup>.

## Constitutional amendments in the years from 2007–2011

In the years 2007–2011, there was a strong constitutional workload. As a result, seven bills containing proposed amendments to the Consti-

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<sup>25</sup> Druk sejmowy nr 1605.

<sup>26</sup> Druk sejmowy nr 1834.

<sup>27</sup> Druk sejmowy nr 1835.

<sup>28</sup> Druk sejmowy nr 1883.

tution of the Republic of Poland, as well as three non-parliamentary bills presented by the Ombudsman in 2009, were submitted to the Sejm for the 6<sup>th</sup> term of office. Only one of the submitted proposals resulted in its adoption as a bill. This draft was submitted to the Sejm on February 27, 2008 by PO and concerned the repetition of the draft on the amendment of the Constitution of the Republic of Poland from the previous term of the Sejm, on which the legislative work has not been completed<sup>29</sup>. The proposed amendment concerned article 99 of the Constitution of the Republic of Poland, where in addition to the new paragraph 3 already mentioned above, it was intended to introduce an additional premise for election to the Sejm in the form of a censorship for impunity<sup>30</sup>.

The remaining group of projects submitted to the Sejm, for which the legislative process was not completed or projects were rejected or withdrawn, there were three projects prepared by PiS; two by the PO and one by the President of Poland. The proposal of the President of the Republic of Poland, Bronisław Komorowski, was submitted to the Sejm on the 12<sup>th</sup> of November 2010 and the PiS project was submitted to the Sejm on the 26<sup>th</sup> of November 2010<sup>31</sup>.

The Extraordinary Committee considered them together and then managed to agree, despite the apparent differences between the two proposals, on a compromise approach to the suggested changes, with the acceptance of representatives of all parliamentary clubs. They concerned only legal and political issues related to Poland's membership in the European Union<sup>32</sup>.

The two bills for amending the Constitution prepared by PO (the first one was submitted on the 19<sup>th</sup> of February 2008 and the second one on the 26<sup>th</sup> of February 2008) concerned changes in the constitutional regulations of the system of functioning of state bodies, and especially the new definition of the role of the President of the Republic of Poland and the Prime Minister in the process of governing the country; limiting the institution of the presidential veto; reducing the number of Members of Parliament from 460 to 300; reducing the number of senators from 100 to 49 and developing a new formula for determining the composition of the Senate; limiting parliamentary immunity; introducing the institution of the Public Prosecutor's Office, the General Prosecutor's

<sup>29</sup> *Zmiany Konstytucji Rzeczypospolitej Polskiej w latach 1997–2011 w świetle projektów...*, p. 8.

<sup>30</sup> Druk sejmowy nr 432.

<sup>31</sup> Druk sejmowy nr 3598; druk sejmowy nr 3687.

<sup>32</sup> Look at this: R. Chruściak, *Prace konstytucyjne w latach 2008–2011*, Warszawa 2013, pp. 59–113.

Office and the National Prosecutor's Council into the basic law; and deleting the provisions on the National Broadcasting Council and the National Security Council from the Polish Constitution<sup>33</sup>. The second draft referred to a proposal to amend article 105 of the Constitution and concerned the abolition of formal immunity in the aspect of litigation and formal immunity in the aspect of inviolability<sup>34</sup>. The last of the submitted Law and Justice drafts (submitted on the 17<sup>th</sup> of October 2008 and the 6<sup>th</sup> of November 2009) concerned changes in the content of articles 17, 39, 60 and 67 and 188 of the Polish Constitution. In the first of the proposed bills, the change was to define the limits of the competence of professional self-governments, as well as to introduce a constitutional basis for the enactment of bills defining the cases in which a court may order that a person with mental disorders who pose a threat to the life, health or physical integrity of other people, be subjected to medical procedures aimed at reducing this threat; to limit the right of access to public service for people who took part in the activities of the communist party and the apparatus of coercion and the related right to information<sup>35</sup>. The second proposal related to article 188 of the Basic Law advocated granting the Constitutional Tribunal the competence to rule on the compatibility with the Constitution of the Republic of Poland of the provisions of the law established by an international organization to which Poland has transferred competence within the meaning of article 90 paragraph 1 of the Constitution of the Republic of Poland<sup>36</sup>. This was primarily to ensure control over the constitutionality of the legal acts of the European Union.

The last group of three proposals for constitutional changes was presented on the website – [www.rpo.gov.pl](http://www.rpo.gov.pl) – on the 2<sup>nd</sup> of September 2009 by the then Ombudsman, Janusz Kochanowski. These proposals were the result of the work of a team of experts that had been prepared within the framework of *the Team for the Constitution* and concerned three visions of the system of government (*a rationalized parliamentary-cabinet system* in which the competences of the Sejm, Senate and government were balanced; *a parliamentary-cabinet system* with a strong position of government and a weakened position of the parliament and a president, who only performed a representative function; *a presidential system* in which the president of the Republic of Poland was at the head of government and

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<sup>33</sup> Druk sejmowy nr 2989.

<sup>34</sup> Druk sejmowy nr 433.

<sup>35</sup> Druk sejmowy nr 1518.

<sup>36</sup> Druk sejmowy nr 3399.

administration) and three different regulations concerning the provisions on amending the Constitution<sup>37</sup>.

## Constitutional amendments in the years from 2011–2015

In the years 2011–2015, i.e. during the seventh term of the Sejm, there were three fundamental proposals to change the Constitution, coming from the Ruch Palikota (RP), Solidarna Polska Zbigniewa Ziobro (SPZZ) and a joint PO and PSL proposal. On the 3<sup>rd</sup> of May 2013, exactly on the 222<sup>nd</sup> anniversary of the adoption of the 3<sup>rd</sup> of May Constitution of the Republic of Poland, Ruch Palikota organized an expert debate entitled, “The Constitution of the Republic of Poland”. As a result of this debate, the following proposals were advocated: reducing the number of deputies, the abolition of the Senate, the actual separation of the state from the church, the introduction of such provisions into the Basic Law that would enable the introduction of the euro in Poland (such as the fact that the National Bank of Poland is part of the European system of central banks). In addition, the need to strengthen the Council of Ministers was encouraged, while at the same time the need for the limiting of the President’s competences and political position was advocated. It also proposed the abandonment of the elections for the head of state<sup>38</sup>.

On the 3<sup>rd</sup> of May 2013, the SPZZ presented its draft constitution. The document called the, “New Constitution of the Republic of Poland”, was a repetition of the provisions of the current Basic Law with amendments in bold. The demands included the introduction of a presidential system, the limiting the Sejm to 230 seats, abolishing the Senate, the introduction of the referendum initiative by a group of at least 300,000 citizens, increasing the number of signatures under the letters of support in the presidential elections to 300,000, and the introduction of a Constitutional Responsibility Court<sup>39</sup>.

<sup>37</sup> Look at this: L. Mażewski, *System rządów w projektach Konstytucji RP Rzecznika Praw Obywatelskich Janusza Kochanowskiego*, [in:] A. Szmyt (ed.), *Studia ustrojoznawcze. Księga jubileuszowa Profesora Andrzeja Pullo*, Gdańsk 2014, pp. 899–910; A. Szmyt, *Problemy zmiany Konstytucji RP w trzech projektach ustawy zasadniczej przedstawionych w 2009 r. przez Rzecznika Praw Obywatelskich*, [in:] R. Chruściak (ed.), *Problemy zmiany konstytucji...*, pp. 295–309.

<sup>38</sup> R. Chruściak, *Najnowsze propozycje zmian w Konstytucji RP*, «*Studia Iuridica Lublinensia*» 2014, Nr 22, p. 432.

<sup>39</sup> *Nowa Konstytucja Rzeczypospolitej Polskiej (Solidarna Polska Zbigniewa Ziobro)*, Warszawa 3.05.2013.

The last draft amendment to the Constitution was submitted to the Sejm on the 24<sup>th</sup> of March 2014 by the Members of Parliament of PO and PSL and included a proposal to add a new article 74a on the protection of the State Forests and to guarantee the protection of the forests owned by the State Treasury against the process of ownership transformation, including commercialization and privatization. This draft was finally rejected at its third reading<sup>40</sup>.

## Constitutional amendments in the years from 2015–2019

In 2015–2019, the debate on current political problems, including changes to the Constitution, became particularly intense, and this was related to the course of the presidential campaign, in which the candidate for President of the Republic of Poland, Paweł Kukiz, demanded the introduction of majority legislation in the form of single-mandate constituencies in elections to the Sejm, the presidential system and a mandatory referendum without a minimum threshold<sup>41</sup>. This was also debated on the occasion of the celebration of the 100<sup>th</sup> anniversary of the Independence Day, as well as during the parliamentary campaign in 2019.

The first draft amendment to the Basic Law was submitted to the Sejm on the 17<sup>th</sup> of December, 2015 and was prepared by *Kukiz'15*, and then supported by the PiS. Its supporters postulated an amendment to article 94 of the Polish Constitution. The draft amendment to the Constitution provided for the expiry of the term of office of the current judges of the Constitutional Tribunal within 60 days of the entry into force of the amendment and the election of new judges, increasing the composition of the Tribunal's judges from 15 to 18. The draft also introduced the principle that the election of the Tribunal's judges should be through a vote in the Sejm that was supported by a two-thirds majority. The draft stipulated that the president and vice-president of the Constitutional Tribunal should be appointed by the President from among at least three candidates presented by the General Assembly of Consti-

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<sup>40</sup> A. Szmyt, *Projekt ustawy o zmianie konstytucji RP w zakresie ochrony lasów państwowych*, <http://niezniknelo.pl/OK2/debaty/projekt-ustawy-o-zmianie-konstytucji-rp-w-zakresie-ochrony-lasow-panstwowych/1/index.html> (19.12.2019).

<sup>41</sup> K. Mazurek, *@PotrafiszPolsko czy @PolskaOdNowa? Magdalena Ogórek i Paweł Kukiz – prezydenci z Twittera*, [in:] M. Kułakowska, P. Borowiec, P. Ścigaj (eds.), *Oblicza kampanii wyborczych 2015*, Kraków 2016, pp. 145–146.

tutional Tribunal Judges and that the Supreme Court was to decide on the constitutionality of the Constitutional Tribunal Act<sup>42</sup>. In the course of parliamentary session, the draft was withdrawn from the Legislative Commission and sent to the Justice and Human Rights Commission.

In early October 2018, the Speaker of the Senate, Stanisław Karczewski, put forward the idea of increasing the number of senators from 100 to 102, two of which were to be elected abroad. The Senate project to amend the Constitution was submitted to the Sejm by PiS senators on the 24<sup>th</sup> of October 2018<sup>43</sup>. The draft was addressed to the Legislative Committee and the Committee on Emigration and Communications with Poles Abroad, however, due to critical legal opinions on the unconstitutionality of the draft, both committees decided to postpone work on the draft law.

The President of the Republic of Poland Andrzej Duda has been particularly interested in amending the Constitution. Since 2015, he has advocated the need to conduct a broad debate and undertake work to amend the Constitution. In May 2017, the President proposed that on the 11<sup>th</sup> of November 2018, the day of the celebration of the 100<sup>th</sup> anniversary of Poland's independence, a referendum should be held, in which the citizens were to express their opinion on the changes to the Constitution express their opinion on the changes to the Constitution. At the same time, PiS conducted its own constitutional campaign consisting of the so-called Constitutional Survey 2017, the results of which were published a year later. As W. Tomaszewski aptly noted, the competitiveness of the PiS actions towards the President from the same political camp was a signal that there was no consensus over supporting the President's idea of holding a constitutional referendum<sup>44</sup>. This motion was rejected by the Senate on the 25<sup>th</sup> of July 2018.

Moreover, on the 30<sup>th</sup> of September 2019, during the election convention in Szczecin, Jarosław Kaczyński, President of PiS, presented a proposal to change the Constitution. They were related to his statement on the necessity to defend freedom of speech in Poland, which in other countries was suppressed by political correctness. Therefore, the President of PiS stated that Poland should become an, "island of freedom". These proposed changes in the Constitution were supposed

<sup>42</sup> Druk sejmowy nr 166.

<sup>43</sup> Druk senacki nr 985.

<sup>44</sup> W. Tomaszewski, *Polski dorobek konstytucyjny lat 1918–2018*, [in:] T. Astramowicz-Leyk, Y. Turchin, W. Żebrowski, K. Żęgota (eds.), *Polska i Polacy 1918–2018. Przemiany polityczne, społeczne, ekonomiczne i kulturowe*, Olsztyn 2019, pp. 123–124.

to strengthen freedom in the legal sense<sup>45</sup>. Despite winning the parliamentary elections in October 2019, the suggested proposal to amend the Constitution has not been formally submitted.

An important political development was the presentation on the 31<sup>st</sup> of July 2017 by the Poznań Branch of the Kukiz'15 Association of the draft Constitution of the Republic of Poland, which consisted of an introduction, 7 chapters and 57 articles. The draft emphasized that the Republic of Poland is a unitary and decentralized state, the Sejm was to be composed of 200 deputies, while the composition of the Senate was not specified in terms of numbers. It was stated that the Senate should consist of: the presidents of the executive bodies of voivodship self-rule, the presidents of the executive bodies of the 10 most numerous communes in Poland, the rectors of the 10 best universities in Poland indicated by the President of the Republic of Poland, former presidents, former Marshals of the Sejm and Senate, and five people appointed directly by the President in recognition of their contribution to the nation<sup>46</sup>. The draft does not constitute a fully developed set of regulations envisaged for a draft Constitution, as it fails to provide definitions of the competences of individual bodies, the functions of the state, or clarifies the supreme values.

A similar proposal was presented in the draft Constitution of the Republic of Poland announced on the 11<sup>th</sup> of November 2017 by the circles centred mainly around the Association of Entrepreneurs and Employers and the Warsaw Enterprise Institute, headed by Robert Gwiżdowski. The project consisted of 17 chapters and 183 articles in total<sup>47</sup>. The document contains several undefined provisions related mainly to the system of government, the division of competencies, the functions of the state, the lack of a definition of the main system of values<sup>48</sup>.

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<sup>45</sup> Kaczyński zapowiada zmiany w konstytucji, <https://www.rp.pl/Prawo-i-Sprawiedliwosc/190929333-Kaczyński-zapowiada-zmiany-w-konstytucji.html> (23.12.2019).

<sup>46</sup> Konstytucja Rzeczypospolitej Polskiej: projekt, Poznań 31.07.2017, <https://kukiz15poznan.pl/projekt-konstytucji/> (23.12.2019).

<sup>47</sup> Projekt Konstytucji Rzeczypospolitej Polskiej, Warszawa 11.11.2017, <https://zpp.net.pl/wp-content/uploads/2018/05/Projekt-Konstytucji-Rzeczypospolitej-Polskiej-wersja-I-1.pdf> (24.12.2019).

<sup>48</sup> W. Tomaszewski, *Proces przygotowania i uchwalenia Konstytucji RP...*, pp. 137–138.

## Conclusion

When the proposed changes to the Constitution of the Republic of Poland and the proposed systemic solutions that emerged between 1997 and 2019 are examined, it is noteworthy that the draft law amending the Basic Law concerned in principle a relatively small constitutional matter. This resulted mainly from the limited scope of the proposed amendments, the formal requirements related to Poland's membership of the European Union, or provisions enforced by the Constitutional Tribunal.

The above remark also applies to the drafts of the Constitution of the Republic of Poland that were submitted by political parties, which constituted a comprehensively developed vision of the desired political reality. The implementation of any of these drafts would require a situation in which this grouping not only gains an independent majority to govern but above all has the qualified majority of two-thirds that is needed to amend the Constitution. This would also require the will of the people, who would have to approve or reject the proposed text of the Basic Law by referendum.

Particularly noteworthy are the proposed changes to the Constitution undertaken since 2015 by the President of the Republic of Poland Andrzej Duda and PiS, which ran on two separate tracks. This lack of consensus over how changes to the Constitution would be ultimately achieved led to the Senate rejecting the proposal to hold a nationwide referendum, and thus deprived both the President of the Republic of Poland and PiS of the opportunity to gauge the enthusiasm of Poland's citizens for either amending the present Basic Law or adopting a new Basic Law.

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