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The constitutional principles of the state's political system as determining the foundations of electoral law

Konstytucyjne zasady ustroju państwa determinujące podstawy prawa wyborczego

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Abstract: The political systems of democratic states are based on specific assumptions contained in the highest legal acts. In Poland, the role of such a supreme legal act is fulfilled by the Constitution of the Republic of Poland, the assumptions being constitutional principles. Their uniform definition has been worked out neither by the legal system nor by the doctrine. Hence, they are sometimes defined differently in science. While for some they are "the legislator's statements of fundamental importance to the functioning of the constitutional system of the state," for others they are instruments of law which certain norms are derived from, thus influencing the shaping of the principles of the political system or administration of justice regardless of whether they are of primary or secondary nature. B. Banaszak emphasises that within individual constitutional norms it is possible to indicate principles of particular importance to the state. And what is more, the indication of a particular principle at the beginning of the Constitution or in a part of it has consequences regarding its further provisions. W.J. Wołpiuk, in turn, maintains that in a descriptive sense, principles are a certain pattern for research purposes. A. Kallas, on the other hand, defines constitutional principles as principles fundamental to the nature of the state.

These principles take the form of separate (individual) provisions, included in the body of Chapter I of the Constitution, but are often also constructed on the basis of a number of its provisions (e.g. the principle of parliamentary system of the government). Worth noting at this point, however, is a certain regularity that in the constitutions of the former communist states of Central and Eastern Europe, they are as a rule quite extensive and have a broad spectrum of impact on the entire legal system. This spectrum is particularly relevant in electoral law. The present article will therefore examine this spectrum. It will show the impact of constitutional principles such as the principle of a republican state, the principle of sovereignty of the Nation, the principle of representation, the principle of political pluralism and the openness of the financing of political parties on the basic premises of the electoral law in terms of its subject matter and substantiveness. The key thesis to be proven is that the constitutional principles indicated above find their direct application and development in the provisions of the electoral law. Accordingly, their consequence is, inter alia, the principle of the tenure of office of individual, representative organs of the state, including the most important ones of the *Sejm* and the Senate, which in its essence constitutes a kind of verification of actions for the existing representatives. In turn, the principle of universality of elections, which is a direct determinant of the principle of sovereignty and representation, on the one hand – admits all eligible citizens to the electoral act, in accordance with the idea of the Constitution of the Republic of Poland, but on the other hand – eliminates incapacitated persons from this act. Further, among the electoral principles of constitutional consequence, it is necessary to point out equality granting each voter one vote, the value of which is one. Finally, the principle of the secrecy of the ballot will not be overlooked, constituting a kind of security for all those taking part in the electoral act that they will not suffer negative consequences as a result of their vote. However, it is important to show and remind that the above principles of the electoral law are closely interconnected, not only within the electoral law itself, but within the entire legal system. This is because nowadays, in scientific political discourse and in practice, the fundamental importance of primary constitutional values, including precisely coherence of the legal system, is overlooked (another value that is just as often displaced is its stability). Hence, demonstrating this coherence of the legal system and emphasising its importance in times of political and legal change is particularly justified. The basic research methods used in the paper will be dogmatic-legal and theoretical-legal methods.

Keywords: constitutional principles, democratic legal state, sovereignty of the people, principle of representation, political pluralism, elections, electoral law

Abstrakt: Ustroje państw demokratycznych opierają się na swoistych założeniach zawartych w najwyższych aktach prawnych. W Polsce rolę najwyższego aktu prawnego pełni Konstytucja Rzeczypospolitej Polskiej, a owe założenia to zasady ustrojowe. Ich jednolita definicja nie została wypracowana ani przez system prawa, ani też przez doktrynę. Stąd w nauce bywają różnie określane. Podczas gdy dla jednych są to „wypowiedzi ustrojodawcy o fundamentalnym znaczeniu dla funkcjonowania konstytucyjnego ustroju państwa", dla innych to instrumenty prawa, z których wynikają określone normy i przez to wpływają na ukształtowanie zasad ustroju politycznego lub wymiaru sprawiedliwości niezależnie od tego, czy mają charakter podstawowy, czy wtórny. B. Banaszak podkreśla, że w obrębie poszczególnych norm konstytucyjnych można wskazać zasady o szczególnie doniosłym znaczeniu dla państwa. Co więcej, wskazanie na określoną zasadę na początku konstytucji bądź w jej

części wywiera konsekwencje na dalsze jej postanowienia. W.J. Wołpiuk z kolei pisze, że w znaczeniu opisowym zasady to pewien wzorzec dla celów badawczych. Natomiast A. Kallas określa zasady ustrojowe mianem zasad fundamentalnych dla charakteru państwa.

Zasady te przybierają postać odrębnych (indywidualnych) przepisów, zamieszczonych w treści rozdziału I konstytucji, ale często są też konstruowane na podstawie szeregu jej przepisów (np. zasada parlamentarnego systemu rządów). Już jednak w tym miejscu warta zauważenia jest pewna prawidłowość, że w konstytucjach byłych państw komunistycznych Europy Środkowej i Wschodniej są one z reguły dość obszerne i mają szerokie spektrum oddziaływania na cały system prawa. To spektrum jest szczególnie istotnie w prawie wyborczym. Toteż jego zbadaniu zostanie poświęcony niniejszy artykuł. Zostanie w nim bowiem ukazane oddziaływanie konstytucyjnych zasad ustroju, takich jak: zasada państwa republikańskiego, zasada suwerenności Narodu, zasada przedstawicielstwa, zasada pluralizmu politycznego i jawności finansowania partii politycznych na podstawowe założenia prawa wyborczego w ujęciu przedmiotowym i podmiotowym. Przy czym kluczową tezą, która będzie podlegała udowodnieniu, jest stwierdzenie, że wskazane powyżej zasady konstytucyjne znajdują swoje bezpośrednie zastosowanie oraz rozwinięcie w przepisach prawa wyborczego. Odpowiednio ich konsekwencją jest między innymi obowiązująca w Polsce zasada kadencyjności poszczególnych przedstawicielskich organów państwa, w tym także tych najważniejszych Sejmu i Senatu, która w swej istocie stanowi swoistą weryfikację działań dla dotychczasowych reprezentantów. Z kolei zasada powszechności wyborów, będąca bezpośrednim wyznacznikiem zasady suwerenności i przedstawicielstwa, z jednej strony zgodnie z ideą Konstytucji RP dopuszcza wszystkich uprawnionych obywateli do aktu wyborczego, z drugiej strony jednak eliminuje z tego aktu osoby ubezwłasnowolnione. W dalszej kolejności wśród zasad wyborczych będących konstytucyjną konsekwencją trzeba wskazać na równość przyznającą każdemu wyborcy jeden głos, którego wartość wynosi jeden. Finalnie nie zostanie pominięta zasada tajności głosowania stanowiąca swoiste zabezpieczenie dla wszystkich biorących udział w akcie wyborczym, że nie poniosą negatywnych konsekwencji w związku z oddanym głosem. Istotne jednak pozostaje wykazanie i przypomnienie, że powyższe zasady prawa wyborczego są ze sobą ściśle spojone, nie tylko w obrębie prawa wyborczego, ale w obrębie całego systemu prawa. Współcześnie bowiem w dyskursie naukowym, politycznym oraz praktyce pomija się podstawowe znaczenie pierwotnych wartości konstytucyjnych, w tym właśnie spójności systemu prawa (inną, równie często wypieraną, jest jego stabilność). Stąd wykazywanie owej spójności systemu prawa i podkreślanie jej znaczenia w czasach zmian politycznych i prawnych jest szczególnie uzasadnione. Podstawowymi metodami badawczymi wykorzystanymi w pracy będzie metoda dogmatyczno-prawna i teoretyczno-prawna.

Słowa kluczowe: zasady konstytucyjne, demokratyczne państwo prawne, suwerenność narodu, zasada przedstawicielstwa, pluralizm polityczny, wybory, prawo wyborcze

1. Introduction

The constitutional principles of the political system, or in other words – the basic principles of the political system of the Republic of Poland, are the legal norms located predominantly in Chapter I of the Constitution of the Republic

of Poland of 2 April 1997 (hereinafter referred to as the Constitution). They determine the basic forms of exercising power and the types of state bodies appointed for this purpose (Garlicki 2019: 67). At the same time, they have a directive function, i.e. they indicate the direction of interpretation for the remaining provisions of the Fundamental Law (Granat 2018: 62). M. Granat rightly observes that the sources of constitutional principles lie in the political decisions taken by the legislator's authority (Skrzydło [ed.] 2010: 104), while the sum of principles – as L. Garlicki points out – determines the constitutional identity of the state (Garlicki 2019: 66).

Decoding the essence and the scope of these principles constitutes a field of consideration for the jurisprudence of the Constitutional Tribunal, but also for the doctrine of law. The following statement is an expression of a desire to combine these considerations in a specific area, namely that of electoral law. Hence, the aim of this article is to show the impact of the constitutional principles contained in Chapter I of the Constitution on the electoral law. The research area so delineated compels us to show to what extent the choice of the concept of a republican state as made by the legislator (Article 1 of the Constitution) (Przybysz 2011: 67), characterised by the tenure of the supreme authorities (Ławniczak 2011: 40), operating as a democratic state under the rule of law (Article 2 of the Constitution), headed by the President coming from universal suffrage, renewed every five years (Article 10(2) in conjunction with Article 127(1) and (2) of the Constitution), with a bicameral parliament composed of the Nation's representatives (Article 10(2) in conjunction with Article 104 of the Constitution), determines, at the level of the Constitution, specific components of the electoral law adopted for the purpose of electing the highest representative of the Republic of Poland and the citizens' representatives in Poland. The same is true of the principle of sovereignty of the Nation expressed in Article 4(1) of the Constitution, the principle of representation (Article 4(2) of the Constitution) and the principle of political pluralism Article 11 of the Constitution).

The constitutional assumptions of the electoral system serve to realise the values of which the aforementioned constitutional principles are the carrier. Therefore, the definition of electoral law in terms of its subject matter, understood as a set of legal norms regulating creation of specific bodies, does not raise any doubts (Buczkowski 1998: 17). What characterises electoral law is the fact that it is the area most closely related to politics and power, as it sets out the rules of political struggle to gain or hold power. As a result, general rules such as the universality of elections or the secrecy of the vote, remain common to all states with a democratic regime.

2. The principle of a democratic state of law and its impact on the legislative process of electoral law

The principle of a democratic state under the rule of law, as expressed in Article 2 of the 1997 Constitution of the Republic of Poland, is composed of two elements: the first one is the 'rule of law' and the second one is 'the principle of democratism'. It is pointed out in doctrine that the rule of law (*Rechtsstaat* in German) is a model of a state organism in which both the individual and the government are bound by the binding rules of law (Tamanaha 2012: 233–234; Grochowski 2008: 139–140; see also, Karakulski 2020: 270–272), in which – at the same time – the principle of the formal legality of the law (its internal morality) is observed. The features that the law should correspond to in order to be considered binding (meeting the standard of internal morality) are several. From our perspective, the following should be regarded as the most important: the law should be promulgated in a manner and at a time guaranteeing the possibility of its free familiarisation (proper promulgation of the law and sufficiently long *vacatio legis*), it should concern future behaviour and not past behaviour (prohibition of retroactivity) and it should be stable (more on the issue in: Colleen. 2005: 240–241; Bałaban 2018: 56; more on *vacatio legis*: Stefaniuk 2016: 59–72).

Consequently, the process of enacting laws, including electoral laws and their validity, exercise of power, the functioning of public bodies and all political activity should be subordinated to the law in force, protected by effective systemic solutions and procedural mechanisms. Law is a value in itself, which invests it with the attribute of autonomy (formal aspect), while the content of law should serve to realise the principle of goodness, equity and justice (material aspect) (Safjan and Bosek [ed.]: 217).

Article 2 of the Constitution proclaims and orders the implementation of the principle of democratism. Democratism, in accordance with the position of the Constitutional Court, is understood as an immanent element of the principle of a democratic state of law. It refers to the following: the obligation to ensure that the sovereign elects its representatives in democratic parliamentary elections, the guarantee of political pluralism (ensuring the functioning of many political parties presenting different political programmes), the obligation to saturate the enacted law with democratic values, and also emphasises the issue of grassroots, free organisation of citizens (Judgment of the Tribunal Court, K 8/10).

However, it should be noted that democracy is such a general and ambiguous concept that it needs to be concretised by reference to constitutional parallel principles such as separation and balancing of powers, individual freedom,

political pluralism, civil society and representation and free elections (Łabędź 2016: 73–74). Therefore, from the constitutional clause of the democratic state of law, covering the various aspects referred to the above, there derive a number of minor, more specific principles, including that of correct legislation – the observance of which is aimed at ensuring the legal security of the individual and realisation of the principle of citizen's trust in the state and the law created by it (Judgment of the Tribunal Court, K 28/97; more on this: Wróblewska 2010: 69–70 ff.).

These principles of legal certainty and citizen's trust in the state and the law created by it (the so-called principle of loyalty of the state towards its citizens) prohibit the legislator to create such normative constructions which are unenforceable, constitute an illusion of law and consequently the appearance of protection of the interests of the individual (Judgment of the Tribunal Court, K 33/02). This principle also prohibits the formulation of promises without coverage and the so-called changing of the rules in the course of the game. This imposes on the legislator, inter alia, the obligation to observe an appropriate *vacatio legis*, i.e. the necessity to use an appropriate date of entry of the law into force and to comply with the prohibition of retroactivity.

Detailed norms with regard to *vacatio legis* (more on this in: Jaskiernia and Spryszak [ed.] 2022) are contained in the Act of 20 July 2000 on the promulgation of normative acts and certain other legal acts (Dz.U. 2000 no. 62 item 718). The content of the provision of Article 4 of the cited Act indicates that (Section 1) normative acts containing universally binding provisions, promulgated in official journals, come into force after the lapse of fourteen days from the date of their promulgation, unless the normative act specifies a longer period. This regulation specifies the minimum period of rest of the act, i.e. 14 days. At the same time, the legislator provided for exceptions to this provision, namely, if an important interest of the state requires immediate entry of a normative act into force and the principles of a democratic state of law do not stand in the way of this, normative acts may enter into force within a period shorter than a fortnight, and the day of entry into force may be the day of publication of this act in the official gazette (para. 2). For the enforcement provisions, the legislator set a three-day deadline for the entry into force of the act, while reserving the possibility of shortening this deadline if a delay in the entry of the enforcement provisions into force could cause irreparable damage or pose a serious danger to life, health or property, in which case the entry into force of such provisions may be ordered on the day of their publication (para. 3). It is noteworthy that the legislator, through the provisions cited above, has set a minimum standard for the *vacatio legis*. Interestingly, however, the legislator did not set an upper limit for the period of *vacatio legis* (Balicki and Jabłoński

[ed.] 2018: 326). In practice, this limit is the 'adequacy' cited in the jurisprudence of the Constitutional Tribunal, for by using this phrase, the Tribunal refers to the period of time during which the addressees of legal norms – after the announcement of new regulations – will be able to manage their affairs in a manner that takes into account the content of the new regulation. "Among the factors determining the length of *vacatio legis* there may be found, in particular, the degree of interference of the legislator in the previous legal situation of the addressees of the introduced norms and the circumstance whether they were given an opportunity to familiarise themselves with their content." (Judgment of the Tribunal Court, P 29/13; Judgment of the Tribunal Court, P 1/95; Judgment of the Tribunal Court, U 10/01). This means that the statement that the *vacatio legis* deadline is appropriate in every case is incorrect. The deadline of 14 days is, in principle, an appropriate deadline, but it is to be assessed in relation to the specific regulation, individually. This is because the assessment as to whether in a given case the *vacatio legis* is appropriate depends on the totality of the circumstances, in particular the subject matter and content of the newly enacted norms and on the result of an analysis as to how the new regulation differs from the one previously in force (Judgment of the Tribunal Court, P 29/13). It can therefore be stated with full conviction that there is no universal rule for determining the appropriateness of *vacatio legis*. It should therefore be rightly concluded that the requirements as to the length of *vacatio legis* are closely linked to the type of matter which the act in question regulates (Judgment of the Tribunal Court, Kp 3/09).

In the case of electoral law, a specific *minimum minimorum* should be enacted at least six months before the next election, understood not only as the act of voting itself, but as the entirety of activities covered by the so-called electoral calendar. Possible exceptions to such a dimension could only result from extraordinary circumstances of an objective nature (Judgment of the Tribunal Court, K 31/06). The Constitutional Court emphasises that the necessity to maintain at least a six-month deadline for the entry into force of significant amendments in the electoral law for the first electoral activity is an inviolable, as a rule, normative component of the content of Article 2 of the Constitution (Judgment of the Tribunal Court, K 31/06). This means that changes to electoral law should be assessed through the prism of this constitutional requirement.

The electoral law must be characterised by stability, and changes to its basic elements should be made in good time. This requirement is strengthened by the provision of Article 123 of the Constitution, which excludes regulations on the election of the President of the Republic of Poland, elections to the *Sejm* and the Senate from the possibility to proceed with them under the urgent procedure, i.e. the so-called fast legislative track.

A sufficiently long *vacatio legis* serves not only to protect citizens, but also to protect the legislator himself, enabling the elimination of possible errors in the law and contradictions in the legal system related to the entry into force of the law (more on the term of *vacatio legis*, Judgment of the Tribunal Court, K 55/02).

3. The principle of the sovereignty of the Nation as a determinant of the principle of universal suffrage

> "Only the popular will can direct the forces of the state according to the purpose of its establishment."
> "Sovereignty is non-transferable, it is indivisible."
>
> J.J. Rousseau *The Social Contract*

The principle of the sovereignty (supremacy) of the Nation is a theoretical Enlightenment concept that is reflected in many of the Basic Laws of modern states. It was formulated by the eminent philosopher of the so-called Age of Reason, J.J. Rousseau. Its reflections were visible in the Act of 17 March 1921 – The Constitution of the Republic of Poland, Journal of Laws of 1921, No. 44, item 267. Article 2 of the aforementioned Basic Law reads that the supreme power in the Republic of Poland belongs to the Nation. The doctrine of the Nation's Government, still valid today, directed Poland to be conceived as a union of free citizens, who alone take care of their independence, law and welfare (Komarnicki 2008: 177).

The principle of the sovereignty of the Nation was articulated in the 1997 Constitution of the Republic of Poland in Article 4(1) ("The supreme power in the Republic of Poland belongs to the Nation"), almost directly after the principle of a democratic state under the rule of law, with which it remains closely linked, as both determine the democratic system of the state. The principle of the sovereignty of the Nation is the basis of the political system of the Republic and consists, in the simplest terms, in recognition of the existence on the part of the Nation of the decision-making freedom vested in the supreme authority in the State and its acceptance of exercising acts of power (elections, referendum, right of resistance) (Garlicki [ed.] 2007: comment number 2). The principle of the sovereignty of the Nation refers to the internal level of the functioning of the state. Its essence is the recognition of the Nation as the subject (holder) of supreme power in the state.

As regards the constitutional understanding of the term "Nation", it is worth emphasising that it is understood in the political, and not ethnic, sense, as it is based on the formulation of the preamble to the Constitution stating "We, the Polish Nation – all citizens of the Republic". The term "Nation" thus

defines the community formed by the citizens of the Republic (Judgment of the Tribunal Court, K 15/04; more on the omission of disenfranchised voters from the concept of the sovereign: Ciżyńska and Pałosz 2017: 8). "The Nation", as A. Rakowska-Trela argues, is treated "as a pluralistic whole, not the electorate, the electorate, let alone only that electorate who, at a given political and political moment, have granted a mandate to govern to a particular majority" (Rakowska-Trela Anna 2017: 101–110). The sovereignty of the Nation means that all organs of public authority are subordinated to its will, as each of them should exercise the powers conferred on it on behalf of and in the interests of the whole Nation (Judgment of the Tribunal Court, K 24/04). The principle of the sovereignty of the Nation may be exercised in a form characteristic of representative democracy, which in Poland is the leading one, or in one of the forms of direct democracy (nationwide or local referendum or citizens' legislative initiative).

The principle of universality of elections remains in direct relation to the principle of the sovereignty of the Nation. The recognition of the Nation as the sovereign firstly influences the legal determination of the range of the subjective scope of electoral rights, i.e. determines the circle of subjects who are entitled to electoral rights; secondly, it forces the legislator to adopt objectivised criteria determining the granting of electoral rights, and thirdly – excludes the application of the so-called electoral censuses, i.e. criteria that are undoubtedly discriminatory in nature (the group of censuses may include property censuses, gender censuses, education censuses, racial censuses, etc.) (Sarnecki ed. 2011: 181).

The 1997 Constitution of the Republic of Poland fully realises the principle of universality by guaranteeing, in Article 62(1), the political subjective right of every citizen who turns 18 years of age at the latest on the voting day to participate in a referendum, as well as the right to elect deputies and senators. The only persons deprived of this right are those who have been placed under guardianship (partly as well as completely) or deprived of public rights by a final court decision (Article 62(2)) (more on this: Banaszak, Michalska Stępień-Załucka 2023: Articles 10 and 82).

4. The principle of representation and its reflections in electoral law

The principle of representation is expressed in Article 4(2) of the Constitution. Mentioned intentionally first, before the direct mode of exercise of power by the Nation, it means that it is the basic, commonly used mechanism for the exercise of power by the sovereign. This principle is the foundation of modern

liberal democracies. It is realised through the election of representatives, carried out by voting, which can be attributed the qualities of: universality, freedom and equality (Judgment of the Tribunal Court, K 9/11).

This type of democracy – representative democracy, consists in the fact that decisions are taken by representative bodies empowered to act on behalf of the Nation, at their will and in their interests. The Constitution recognised *expressis verbis* MPs and senators as representatives of the Nation (Article 104(1), the first sentence of the Polish Constitution). Members of the European Parliament are not representatives within the meaning of the Basic Law, even though they are elected by universal suffrage. The European Parliament is not a body exercising supreme authority in the Republic of Poland within the meaning of Article 4(1) of the Constitution, and consequently – Polish citizens do not exercise their supreme authority of the Republic of Poland through it. Article 4 of the Constitution provides for the exercise of supreme power by the Nation only in the Polish State.[1]

The implementation of indirect (representative) democracy requires fulfilment of a number of conditions, among which one should mention the universality of elections, which is only real if the Constitution or the electoral law (Act of 5 January 2011. Election Code, Dz.U. 2011 No. 21 item 112 as amended) develops a system of procedures and institutions ensuring the possibility of voting for every person (including the disabled, citizens residing abroad, as well as those in penal institutions, treatment centres, social welfare homes, etc.) who holds the active right to vote, in particular by ordering that the elections be held on a non-working day and by holding voting in numerous permanent and separate polling districts (Article 12 of the Electoral Code) (Kisielewicz and Zbieranek. 2018: commentary on Article 12).

It should be mentioned here that direct democracy, on the other hand, is currently only of a complementary nature. The implementation of the concept of direct democracy is expressed, inter alia, in the procedure of direct participation in a referendum and casting a vote (Article 125 of the Constitution guarantees citizens' participation in a nationwide referendum, Article 90(3) of the Constitution in a ratification referendum, Article 235(3) of the Constitution in a referendum approving amendments to Chapters I, II and XII of the Constitution, and Article 170 of the Constitution – participation in a local referendum) (more on the referendum, Krasnowolski: 3).

[1] The Tribunal Court argues that the election of representatives itself is in fact one of the ways in which power is exercised directly by the Nation (see: Judgment Tribunal Court 20th July 2011, K 9/11).

5. The principle of political pluralism and electoral law

In well-established, mature democracies, where citizens participate in the electoral process by nominating their representatives to representative bodies, political parties play a key role. Political parties are voluntary, formal, purpose-driven social organisations that operate in the public space, defining their goals and methods of achieving them through an ideology and/or a political programme. The aforementioned political programme is the basis for parties to gain wider public support, through which it becomes possible to gain, maintain or influence power, primarily through regular participation in elections (Michalak and Sokala. 2010: 99). Pursuant to the current Act of 27 June 1997 on political parties, Journal of Laws 2022.372, i.e. – a political party is a voluntary organisation under a specific name, which aims to participate in public life by exerting an influence through democratic means on shaping the state policy or exercising public authority (Article 1(1) of the Act), and as a rule requires registration in the register of political parties (see more on the issue: Chmaj 2008: 19–23).

An election is a cyclical process of appointing representatives to specific positions or to perform specific functions for a legally defined period of time by citizens through voting (Chmaj 2023: 10). As it is a process consisting of many stages, it should not be equated with voting alone, which is only a part of the electoral procedure (Michalak and Sokala 2010: 167). In the electoral process, a key role is assigned to political parties not without reason. Their free creation and operation in Poland is ensured by the constitutional principle formulated in the first chapter of Article 11 of the Polish Constitution, namely the principle of political pluralism. Pluralism, which is called the foundation of democracy, provides multiplicity and diversity of currents in public life, including politics. The constitutional principle of political pluralism safeguards first and foremost the interests of citizens by guaranteeing the existence of numerous and diverse players on the political scene, i.e. many parties with different programmes (left-wing, centrist, right-wing, etc.) (Wróbel 2009: 109; Korzeniowski 2014: 27).

In order to be in line with the concept of a democratic state of law and the principle of representation, as well as to provide an impetus for the development of civic society, political parties must meet several important requirements, articulated by the Basic Law itself: firstly, they must associate Polish citizens on a voluntary and equal basis (thus, forced membership of political parties and any form of discrimination against members of political parties is excluded); secondly, they must influence the shaping of state policy by democratic methods (one of these methods is precisely participation in universal and free elections); thirdly, it should be financed openly and transparently with rules excluding

the influence of, for example, foreign lobbying groups, foreign governments, multinational corporations, etc (more on this: Kowalczyk: 154–162).

Pursuant to Article 13 of the Constitution, it is forbidden in Poland to have political parties whose programmes make reference to totalitarian methods and practices of Nazism, fascism and communism, as well as those whose programme or activities presuppose or permit racial and national hatred, use of violence to gain power or influence state policy, or provide for the secrecy of their structures or membership. A breach of the above principles may result in banning of a political party, following a ruling by the Constitutional Tribunal (Article 188, point 4 of the Constitution and Article 44 of the Political Parties Act) and, consequently, in its dissolution (Article 44 in conjunction with Article 45, point 2 of the Political Parties Act).

Incidentally, the following should be added, the participation of political parties in the electoral process cannot be overestimated. Electoral committees of political parties and coalitions of political parties play a leading role in elections to the *Sejm*, the Senate, in elections to the bodies that constitute local self-government units and in elections of the mayor (Article 84 of the Act of 5 January 2011. Electoral Code, Journal of Laws of 2022, item 1277, i.e., hereinafter referred to as Electoral Code). Electoral committees of political parties, acting in a recognisable (they have graphic symbols protected by law) but also organised manner, raise funds for costly election campaigns. Transparency of the sources of funding and the flow of money related to conducting a pre-election campaign is important. Therefore, the legislator introduces the constitutional principle of openness of political party financing, which is reflected, inter alia, in statutory provisions imposing on parties the obligation to create a permanent Electoral Fund to finance participation in elections to the *Sejm* and the Senate, elections of the President of the Republic of Poland, elections to the European Parliament and elections to local government bodies (Article 35(1) of the Act on Political Parties) and the obligation of financial reporting of election committees (Chapter 15 of the Electoral Code) (more on this: Bukowska, Gendźwiłł, Haman, Sawicki and Zbieranek. 2017: 123 ff.).

In conclusion, the legal regulations on political parties in force in Poland, both at the level of the Constitution and that of ordinary legislation, take into account the latest trends in the law of modern democratic states, consisting in the acceptance of the function of political parties in the democratic system and, consequently, the recognition of the right of political parties to influence the formation of state policy – a right guaranteed by the relevant constitutional and statutory regulations. Contemporary legal solutions to the constitutionalisation of political parties refer to the assumption that "the function of parties as organisers of the articulation of the political will of the nation (society) and

their coupling with the mechanisms of formation and realisation of state power are so important that their omission risks reducing the significance of the Constitution to the role of a screen, decoration, or at the best – a façade shielding the actual political processes. Indeed, parties are not only a form of exercise of the right of association, but at the same time fulfil important public functions, closely linked to state power" (Judgment of the Tribunal Court, Pp 1/99).

Political parties are a key link in the electoral process. On the one hand, they are a vehicle for programmes, concepts and ideas and, on the other – they remain an active player in the struggle to influence the exercise of state power by democratic means.

6. Conclusions

There is a direct relationship between the basic constitutional principles expressed in the 1997 Constitution of the Republic of Poland and the conceptual assumptions of the electoral law, both in terms of subject and object. The consequence of the adoption of the principle of a republican state is the tenure of organs and the necessity to renew their staffing through elections. As a consequence of the adoption of the Enlightenment principle of the sovereignty of the Nation and the principle of representation, the principle of universality of the electoral law in subjective terms, the principle of equality of elections, the secrecy of vote and setting the electoral day as a public holiday become obvious. The complex construct of the principle of a democratic state of law, which presupposes the participation of citizens in the electoral process, enforces the stability of the law, guarantees citizens' knowledge of the rules of the electoral game at least six months prior to undertaking and performing the first electoral activities in accordance with the electoral calendar.

In turn, the Constitutional principle of political pluralism guarantees formation of political parties in order for them to influence the shaping of the state's policy by democratic means as well as determines the inclusion in the electoral law of a number of solutions concerning the functioning of electoral committees of political parties. The same is true of the principle of openness of political parties' financing, including transparency of financing of their participation in the electoral procedure.

The observed relations between constitutional principles and solutions of the electoral law allow us to state with conviction that the constitutional principles find their reflection in the electoral law. Although they appear to be the most important ones, certainly they do not exhaust the whole set that can be distinguished. Thus, it remains to be hoped that the observed relations will constitute a contribution to further in-depth research and a broader scientific discussion.

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