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The Procedure for Amending the Constitution in the Republic of Poland – Selected Issues¹

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The article examines the procedure of amending the existing Constitution of the Republic of Poland. The authors present the procedure of amending the existing Constitution. The authors also consider in the article the scope of the postulated changes and seek the answer to the question whether the changes of the existing Constitution are needed. They also analyse the changes that have already been made to the Constitution. The research methods used for preparation of the current article are the dogmatic-legal method and the empirical method.

Keywords: Constitution, Republic of Poland, amendments to the Constitution, procedure for amending the Constitution.

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Introduction

The Constitution is a law because it is passed by the Parliament as the supreme legislator, it is a universally binding normative act, however it has some specific features that allow it to be referred to as the fundamental law. It is characterised by the fact that it contains norms of the highest legal force, regulating the foundations of the political and social system, it is passed by an appointed body and is amended in a special procedure.

The current Constitution of the Republic of Poland² was passed by the National Assembly, which consisted of the joint chambers of the *Sejm* and Senate by a majority of two thirds of votes on 2 April 1997. The Constitution was approved by the nation in a referendum on 25 May 1997 and it came into force on 17 October 1997³.

Article 8 of the Constitution states that the Constitution is the supreme law of the Republic, and its provisions are directly applicable. The system of Polish law is built on the principle of hierarchy of particular types of normative acts, with the Constitution at the top. Three consequences follow from the adoption of this principle: 1) The constitution is the primary and unlimited act and thus can normalize any matter; 2) The constitution has the highest legal force; this means that all other normative acts must be consistent with it; 3) All other normative acts must be consistent with the constitution, i.e. their contents must in the fullest possible way realize the provisions of the constitution⁴.

Article 8 of the Constitution states that the provisions of the Constitution shall be applied directly. This means that the Constitution is binding in all types of legal relations and is directly applied by all types of state bodies, and an individual may directly invoke its norms.

1. Procedure for amending the current Constitution

The process of creating the law in itself represents an important characteristic of the statutory law culture. In this case, we deal with some diversification of the level of the process formalisation. The higher the rank of the given legal act, the more formalised the entire procedure. It is also important that in the statutory law culture the representatives of the society in the Parliament, bodies of the State, as well as the citizens have the legislative initiative. Attention should be drawn to the fact that, as a principle, the local authorities follow the example of the parliamentary form of the legislative procedure within the frameworks of their own legislative competences. The legislative referendum that represents a specific plebiscite, compulsory or facultative form of creating the law is also an important issue. Codifications likewise represent the issue characteristic to that legal culture. Usually, they represent statutory regulations collected into a single act concerning a given aspect of life or the law. Promulgation is done by the body other than the body that enacted the given law. In other words, it is the rule that the enacted law, to be valid, must be confirmed by another body, e.g., the President signs the Act of Parliament. Then this issue is also related to the appropriate publication of the legal act that takes place through

² Konstytucja Rzeczypospolitej Polskiej [The Constitution of the Republic of Poland] (02.04.1997). Available: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [last viewed 10.05.2022]. Hereinafter referred to as the Constitution.

³ On the history of Polish constitutionalism see: *Prokop, K.* Polish constitutional law. Białystok: Temida2, 2008, pp. 11–15.

⁴ Art. 87 of the Constitution.

appropriate publication in the medium for publication of legal acts. The point here is the so-called legal fiction concerning the knowledge of the law. Appropriately published legal act creates the situation of common knowledge of the given legal act.

Addressing a procedure for amending the Constitution, at the very beginning, the question arises as to whether the case is one of amending the Constitution or introducing changes within the Constitution. This is a fundamental question, since the concept of amending the Constitution may have different meanings and scope. Chapter XII of the Constitution of the Republic of Poland of 1997 is entitled “Amending the Constitution”, and the legal regulations contained therein concern both the changes introduced to the current text, as well as the adoption of a completely new Constitution.

There is also an opinion in the literature that amending the Constitution is understood to mean the repeal or giving a different content to all or only some of the provisions of the Constitution, as well as the issuance of new constitutional norms in the manner provided for the amendment of the Constitution⁵.

Activities of this kind are defined in various ways in the literature. We come across the term “change”, sometimes “reform”, “amendment” or “revision” of the Constitution, and these names are often used interchangeably. The most common term is “amendment”, which is understood as a partial amendment or supplementation of an earlier act by a later act. The terms “reform of the Constitution” or its “revision” are used less frequently, and some authors give them a special meaning.

It should be emphasised that the stability of the state and the law it creates is a generally recognised value. However, this is a stability that should not be equated with the unalterableness of the law, including the norms of the Constitution. This is expressed by the constitutional legislator allowing the possibility of the occurrence of socio-political phenomena justifying the need to make appropriate changes to the Constitution.

The constitutional legislator defines them in Art. 235 of the Basic Law. It regulates the manner of their introduction. This procedure is more difficult compared to making changes to ordinary acts. This type of constitution is included in the category of rigid constitutions, as opposed to easily changeable, i.e. flexible, constitutions.

This is also expressed in the limited number of entities with the right to initiate these changes, strictly limited periods of time for conducting the legislative process, the requirement to support the proposed changes by a qualified majority of votes in the *Sejm*, and in the Senate by an absolute majority, as well as in the management of a referendum enabling voters to define their attitude to the proposed constitutional changes.

The procedural requirements for amending the Constitution are, as follows:

A bill to amend the Constitution may be submitted by the following: at least one-fifth of the statutory number of Deputies; the Senate; or the President of the Republic. Amendments to the Constitution shall be made by means of a statute adopted by the *Sejm* and, thereafter, adopted in the same wording by the Senate within a period of 60 days. The first reading of a bill to amend the Constitution may take place no sooner than 30 days after the submission of the bill to the *Sejm*. A bill to amend the Constitution shall be adopted by the *Sejm* by a majority of at least two-thirds

⁵ Banaszak, B. Konstytucja Rzeczypospolitej Polskiej. Komentarz [Constitution of the Republic of Poland. A commentary]. Warsaw, 2009, pp. 472–473; Skrzydło, W. Zmiana Konstytucji czy zmiany w Konstytucji Rzeczypospolitej Polskiej z 1997 roku? [Amendment of the Constitution or amendments to the 1997 Constitution of the Republic of Poland]. Teka Komisji Prawniczej, Vol. I, 2008, pp. 172–186.

of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators. The adoption by the *Sejm* of a bill amending the provisions of Chapters I, II or XII of the Constitution shall take place no sooner than 60 days after the first reading of the bill. If a bill to amend the Constitution relates to the provisions of Chapters I, II or XII, the subjects specified in para. 1 above may require, within 45 days of the adoption of the bill by the Senate, the holding of a confirmatory referendum. Such subjects shall make application in the matter to the Marshal of the *Sejm*, who shall order the holding of a referendum within 60 days of the day of receipt of the application. The amendment to the Constitution shall be deemed accepted if the majority of those voting express support for such amendment. After conclusion of the procedures specified in paras 4 and 6 above, the Marshal of the *Sejm* shall submit the adopted statute to the President of the Republic for signature. The President of the Republic shall sign the statute within 21 days of its submission and order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*).

The introduction of the presented difficulties is intended to protect the constitutional law against changes dictated by the short-term political interests of the ruling groups, and not resulting from the needs of the nation and the state.

2. The amendments made to the current Constitution to date

2.1. Amendment of the Constitution of the Republic of Poland – 2006

The President of the Republic of Poland submitted to the *Sejm* a bill on amending the Constitution with regard to the implementation of the European arrest warrant into the Polish legislation. The change proposed by the President was aimed at enabling continuity of the institution of the European arrest warrant, which had existed in the Polish legal system since 1 May 2004, i.e., since the date of Poland's accession to the European Union. Approved and appreciated by the Polish authorities, the European Arrest Warrant is a judicial decision issued by a Member State in order to arrest and surrender by another Member State a person prosecuted in connection with criminal proceedings conducted against him or her for an offence for which the maximum penalty is at least one year's imprisonment, or for the execution of a penalty or a protective measure involving deprivation of liberty of at least four months. Furthermore, the amendment of the Constitution was linked to a decision of the Constitutional Court in which one of the provisions of the criminal procedure implementing the Framework Decision of the Council of the European Union on the European Arrest Warrant was declared unconstitutional⁶. The Court did not apply the dynamic interpretation used so far by the Polish legislator in the process of implementation of EU law. The Constitutional Tribunal, stating the unconstitutionality of the provision of criminal procedure, on the basis of which it is possible to surrender a person to a foreign state, set the maximum 18-month deadline for postponing the loss of its binding force. He also stated that ensuring the continuity of the European Arrest Warrant should be a top priority for the Polish

⁶ The Constitutional Tribunal (in the judgment P 1/05), finding on 27 April 2005, the unconstitutionality of the provision of the criminal procedure, on the basis of which it is possible to surrender a person with Polish citizenship to a foreign state, established an eighteen-month (maximum) period of postponement when its binding force ceased to exist. P 1/05, Legalis No. 68295, Judgement of the Constitutional Tribunal of the Republic of Poland of 27 April 2005 in case P 1/05. Available: <https://ipo.trybunal.gov.pl/ipo/Sprawa?cid=1&dokument=601&sprawa=3772> [last viewed 10.05.2022].

legislator, since the European Arrest Warrant is of vital importance for the proper functioning of the justice system and is an expression of advanced cooperation between Member States to combat crime and strengthen security⁷.

2.2. Amendment of the Constitution of the Republic of Poland – 2009

In 2009, an amendment was passed concerning the right of suffrage (passive electoral right). It was intended to meet public expectations that the *Sejm* and Senate would not accept as members the individuals who had been validly convicted of intentional crimes prosecuted by public indictment. Citizens are almost unanimous that laws should not be made by criminals. Anyone convicted of an intentional offence prosecuted by public indictment can be described as a criminal. Surveys that have been published in the nationwide media indicate that as many as 85% of Poles believe that MPs with final sentences should lose their seats. Only 8% of respondents were of an opposite opinion. Amending the Constitution to eliminate criminals from the Polish parliament will improve the image of the legislative branch. It would be difficult for Poles to come to terms with the fact that those who participate in the creation of laws are those who break the law themselves and have a legally valid conviction to prove it. In order to meet the expectations of the citizens of the Republic of Poland, the proponents propose an amendment to the Constitution, which will enable the amendment of the electoral law for the *Sejm* and Senate and the law on the performance of the mandate of deputy and senator. The amendment of the provisions of the Constitution in the scope of regulations concerning the right to stand for election to the *Sejm* of the Republic of Poland and the Senate of the Republic of Poland is, in fact, a condition opening the way to further amendment of the provisions of the Constitution in the area of the regulations concerning the right to stand for election to the *Sejm* of the Republic of Poland, and the Senate of the Republic of Poland is a prerequisite for further amendments to the provisions concerning the ban on running for office and loss of seats by deputies or senators who have been validly convicted of an intentional crime prosecuted by public indictment.

The applicants (a group of MPs) stressed that analogous amendments had already been introduced by the legislator with regard to the mandates of members of local self-government bodies⁸. The standards required of MPs and senators cannot be lower

⁷ Statistics on the use of the European Arrest Warrant. Available: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie> [last viewed 10.05.2022]. Ossowska-Salamonowicz, D., Przybyszewska-Szter, B. Harmonizacja prawa krajowego państw członkowskich UE a konieczność zmiany Konstytucji RP z 2 kwietnia 1997 r. [Harmonization of the national law of the EU Member States and the necessity of amending the Constitution of the Republic of Poland of 2 April 1997]. Toruń Polish-Italian Studies, Vol. XVII, 2021, pp. 237–250. Available: <https://doi.org/10.12775/TSP-W.2021.016> [last viewed 10.05.2022].

⁸ Article 7.2 of the Election Ordinance for Commune Councils, County Councils and Province Assemblies states: Persons do not have the right to be elected, if they are: 1) punished for an intentional crime prosecuted by public indictment; 2) those, who have been given a legally binding verdict conditionally discontinuing the criminal proceedings on the commission of an intentional crime prosecuted by public indictment prosecuted by public indictment; 3) those, who have been subject to a valid court ruling stating that they have lost the right to be elected, referred to in Art. 21a, item 2 of the Act of 18 October 2006 on the Disclosure of Information on Documents of State Security Agencies from the Years 1944–1990 and the Content of such Documents (Journal of Laws of 2007, No. 63, item 425, as amended). The provision of the Act expired on 01.08.2011. (Journal of Laws of 2011, No. 21, item 113). Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw [Election Ordinance for Commune Councils, County Councils and Province Assemblies] (16.07.1998). Available: https://pkw.gov.pl/uploaded_files/1456318776_Ordynacja_wyborcza_do_rad_gmin_rad_powiatow_sejmikow_województw_-_wersja_aktualna.pdf [last viewed 10.05.2022]. It was replaced by Art. 10 a new law of

than those required of local government officials. The changes will not, however, exclude from parliament the persons who have been convicted by a court of a crime prosecuted by private prosecution, i.e. have committed libel. Members of parliament and senators will also be able to become members if they have been convicted of an intentional offence prosecuted by a private prosecutor, but have been given a fine or a restriction of liberty by the court. People whose offences have been erased, i.e., deleted from the National Criminal Register, will also have the right to be elected to parliament⁹.

During work on the amendment of the Constitution, it was argued, among other things, that parliamentary immunity as a derogation from the fundamental principle of equality of citizens before the law, set out in Article 32 of the Constitution, should not be a pass to an oasis of impunity. Unfortunately, this exceptional privilege of parliamentarians is often abused. Sometimes, MPs have used it to avoid responsibility for common crimes, such as rape, drunk driving, forgery, paid protection or simple fraud. There have also been situations in which persons suspected of committing crimes have obtained a parliamentary seat solely on the basis of so-called party arrangements, while immunity has provided them with a safe haven for four years. Behaviour of this kind definitely lowers the level of citizens' trust in MPs and senators¹⁰. It is therefore important to eliminate criminals from the Polish Parliament. However, the movers' draft has met with much criticism. Arkadiusz Mularczyk, MP, stated that the draft under consideration is the most restrictive in the entire European Union. The conclusions of the analysis are very surprising. In many countries, such as Hungary, Italy, Slovakia, Estonia, Andorra, Albania, only the people who serve prison sentences are precluded from becoming members of parliament. By contrast, in countries such as Italy, the United Kingdom, Croatia and Israel, it is the court that determines whether someone can be a parliamentarian or not. There are also limits on the length of imprisonment that a person can serve as a parliamentarian or senator. In countries such as Germany, the United Kingdom and Italy, only people with a prison sentence exceeding 12 months are eligible to vote. In these countries, only committing certain crimes makes a person ineligible to be a parliamentarian, these are, for example, crimes against elections, constitutional order or public security. It is also sometimes the case that a person's mandate is not revoked until that person has been convicted during her/his term of office. On the other hand, some legal systems do not provide for limitations on the right to stand for election, such as Finland, Norway, Georgia and Slovenia. In the United States, the Fourteenth Amendment to the Constitution provides that a parliamentarian's mandate expires only if he or she has been convicted of treason. However, the rules of procedure of the Democratic

5 January 2011. Provisions introducing the Act – Election Code. Ustawa – Przepisy wprowadzające ustawę – Kodeks wyborczy [Act – Introductory provisions to the Act – Election Code] (05.01.2011). Available: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20110210113/T/D20110113L.pdf> [last viewed 10.05.2022].

⁹ Jaraszek, A. Posłem nie zostanie osoba skazana [A convicted person will not become an MP]. Dziennik Gazeta Prawna 2009-10-21; Available: <https://prawo.gazetaprawna.pl/artykuly/363204,poslem-nie-zostanie-osoba-skazana.html> [last viewed 10.05.2022].

¹⁰ Draft Act amending the Constitution of the Republic of Poland. Stenographic reports from the sittings of the *Sejm* of the Sixth Term of the Republic of Poland. Transcript of the 15th sitting of the 6th *Sejm* of 8 May 2008. Available: [https://orka2.sejm.gov.pl/StenoInter6.nsf/0/1AE638233535823BC12574440002956D/\\$file/15_b_ksiazka.pdf](https://orka2.sejm.gov.pl/StenoInter6.nsf/0/1AE638233535823BC12574440002956D/$file/15_b_ksiazka.pdf) [last viewed 10.05.2022]. Despite being convicted by 32 final sentences, Ignacy Daszyński successfully ran for the Austrian Parliament. In 1897, he became a member of the Austrian Parliament and remained there until 1918. 12.11. Jarosiński M., Ignacy Daszyński (1866-1936). Available: <https://dzieje.pl/postacie/ignacy-daszyński> [last viewed 10.05.2022].

and Republican Parties there provide that these parties simply do not include formerly convicted people on electoral lists; such people are simply eliminated. All this means that practically in most European countries, in the United States and in Israel, there are certain limits which determine when someone cannot be a parliamentarian. There is no situation in which every offence would eliminate a person from public life. There are no regulations of this kind at all in countries such as the Czech Republic or Switzerland¹¹. Despite the stormy work on amending the Constitution, the parliamentary majority has decided that there is no way that good laws can be made by people who do not abide by them themselves, thus lowering the authority of the High Chamber¹². A dignified performance of one's duties in the Republic of Poland and the conscientious discharge of one's duties towards the nation should be characterised, first and foremost, by adherence to the Constitution and other legal provisions in force in the territory of the Republic. As a result, on 07.05.2009, the *Sejm* passed a law amending the Constitution of the Republic of Poland. In the vote participated 413 deputies (out of 460). A majority of 2/3 of votes (i.e., 276) was necessary to adopt the amendment to the Constitution. There were 404 votes in favour of amending the Constitution, none against and 9 abstentions. The Senate did not make any amendments, and the President signed the law on 09.07.2009¹³.

3. Draft amendments

However, the small number of real amendments to the Constitution does not translate into the absence of numerous submitted draft amendments. In the *Sejm* of the 3rd term (1997–2001), still in the year of the enactment of the Constitution, appeared a project of amending the content of Article 105 (concerning changing the scope of immunity of MPs and senators). The draft was rejected at the first reading¹⁴. On 27 April 2000, the *Sejm* received a parliamentary bill amending the Constitution as regards equipping the National Bank of Poland with the capacity to issue universally binding acts of law. However, it has never been subject to the procedure¹⁵. In the *Sejm* of the 5th term (2005–2007), several amendment bills were worked on:

¹¹ Draft Act amending the Constitution of the Republic of Poland. Transcribed reports from the sittings of the *Sejm* of the Sixth Term of the Republic of Poland. Available: [https://orka2.sejm.gov.pl/StenoInter6.nsf/0/1AE638233535823BC12574440002956D/\\$file/15_b_ksiazka.pdf](https://orka2.sejm.gov.pl/StenoInter6.nsf/0/1AE638233535823BC12574440002956D/$file/15_b_ksiazka.pdf) [last viewed 10.05.2022], pp. 165–167.

¹² One of the proposed amendments to the Constitution stipulated that Art. 99, section 4 would have the following wording: "The right to vote in elections to the *Sejm* and to the Senate does not apply to persons who served or worked before 1 January 1990 in the structures of the Polish United Workers' Party and the state coercive apparatus subordinated to it, conducted activities that were directed against the aspirations of the nation for independence and freedom, the rights of citizens and the rights of the Church and independent social institutions, including persons conducting and supporting these activities." Transcript of the session of the *Sejm* of 07.05.2009, pp. 209–212. Available: 41_b_ksiazka.indb (sejm.gov.pl) [last viewed 10.05.2022].

¹³ Since 21.10.2009, the amended (by adding paragraph 3) content of Article 99 of the Constitution has been in force. Article 99 (1) Every citizen who is an active voter and has attained the age of 21 on election day at the latest has the right to vote. (2) Every citizen who has attained the age of 30 years on the day of the elections at the latest shall be eligible to vote in the Senate. (3) No person may be elected to the *Sejm* or the Senate who has been sentenced by a final sentence to imprisonment for an intentional offence prosecuted by public indictment. Available: <https://www.sejm.gov.pl/prawo/konst/polski/kon1.htm> [last viewed 10.05.2022].

¹⁴ The course of the legislative process of the *Sejm* of the 3rd term. Available: <https://orka.sejm.gov.pl/proc3.nsf/0/B665ABD455962574C1257456004D731C?OpenDocument> [last viewed 10.05.2022].

¹⁵ The course of the legislative process of the *Sejm* of the 3rd term. Available: <https://orka.sejm.gov.pl/proc3.nsf/0/98268B53989D0DC1C1257456004D5077?OpenDocument> [last viewed 10.05.2022].

- 1) supplementing the existing provision by guaranteeing the protection of life from the moment of conception (print No. 993¹⁶); the method of appointment of persons holding the judiciary, included a proposal to introduce the institution of a judge appointed to hold office for a fixed period (from 2 to 4 years), which would enable cases to be heard by bodies meeting constitutional standards of independence and independence without dependence on executive bodies (print No. 1605¹⁷);
- 2) restriction of the right of election to the *Sejm* and Senate or expiry of the mandate of a deputy or senator due to a final conviction for an intentional offence prosecuted by public indictment or a fiscal offence (print No. 1834¹⁸);
- 3) limiting the formal immunity of MPs and senators by, inter alia, dropping the requirement that the *Sejm* or Senate consent to the prosecution of an MP or senator for criminal offences and imprisonment of an MP convicted by a final court judgement and to the use of preventive measures in the form of pre-trial detention on the same terms as for other citizens (print No 1835¹⁹);
- 4) amending the rules on parliamentary immunity (print No 1883²⁰).

In the 6th *Sejm* (2007–2011), in addition to the effective amendment concerning the change in the premises for the right to stand for election to the *Sejm* and Senate of the Republic of Poland, a number of bills were debated:

- (1) The abolition of provisions relating to the formal immunity to which MPs and senators are entitled (print No. 433²¹);
- (2) Eliminating the influence of the professional self-government (corporations) on the access to a given profession of persons wishing to practice it, i.e., potential competitors of the existing members of the corporation; clearing the communist past; constitutional admissibility of coercive medical influence (in particular pharmacological) on persons who, due to a mental disorder, pose a threat to life, health and physical integrity of another person (print No 1518²²);
- (3) Amendment of the provisions concerning the composition of the *Sejm* and Senate, the rules for elections to the *Sejm*, the scope of parliamentary formal immunity, the rules for the consideration of a presidential veto by the *Sejm*, the rules for adjudication by the Constitutional Tribunal in cases concerning the compliance of laws with the Constitution at the request of the President of the Republic of Poland, the rules for the performance of duties by the President of the Republic of Poland, the rules for proposing candidates for the office of President of the Republic of Poland, the principles of temporary performance of

¹⁶ The course of the legislative process of the *Sejm* of the 5th term. Available: <https://orka.sejm.gov.pl/proc5.nsf/opisy/993.htm>, [last viewed 10.05.2022], rejected at the 3rd reading.

¹⁷ The course of the legislative process of the *Sejm* of the 5th term <https://orka.sejm.gov.pl/proc5.nsf/opisy/1605.htm>, case not closed, referred for further work, but due to end of term no further work undertaken. Available: [last viewed 10.05.2022].

¹⁸ The course of the legislative process of the *Sejm* of the 5th term. Available: <https://orka.sejm.gov.pl/proc5.nsf/opisy/1834.htm> [last viewed 10.05.2022].

¹⁹ The course of the legislative process of the *Sejm* of the 5th term. Available: <https://orka.sejm.gov.pl/proc5.nsf/opisy/1835.htm> [last viewed 10.05.2022].

²⁰ The course of the legislative process of the *Sejm* of the 5th term. Available: <https://orka.sejm.gov.pl/proc5.nsf/opisy/1883.htm> [last viewed 10.05.2022].

²¹ The course of the legislative process of the *Sejm* of the 6th term. Available: <https://orka.sejm.gov.pl/proc6.nsf/opisy/433.htm>, draft withdrawn by applicants.

²² The course of the legislative process of the *Sejm* of the 6th term. Available: <https://orka.sejm.gov.pl/proc6.nsf/0/C26D7F0E2F5D0A2EC12577D1004F13AE?OpenDocument>, draft rejected at first reading [last viewed 10.05.2022].

the functions of President of the Republic of Poland by the Marshal of the *Sejm*, the principles of ratification of international agreements, the principles of cooperation of authorities in the field of foreign policy, the principles of appointment by the President of the Republic of Poland of the Chief of General Staff of the Polish Armed Forces and commanders of the types of the Armed Forces, the scope of the President's prerogatives, the principles of appointment of judges – the introduction of provisions concerning the public prosecutor's office; – the repeal of provisions concerning the National Security Council, the National Broadcasting Council, the individual political responsibility of members of the Council of Ministers and the procedure for expressing a vote of no confidence in a minister (print No 2989²³);

- (4) The provisions of the Constitution of the Republic of Poland concerning the competence of the Constitutional Tribunal as regards the subject matter of the adjudicated cases, the provisions concerning the publication of the decisions of the Constitutional Tribunal and the effects of certain decisions of the Constitutional Tribunal (print No 3399²⁴);
- (5) Introducing solutions to facilitate the effective implementation of EU law by fully implementing the commitments undertaken in the Accession Treaty as regards participation in Economic and Monetary Union and adoption of the euro; – introducing a procedure for adopting Poland's position in the new EU procedures and standardising the procedure for taking a decision on withdrawal from the EU (Rec. 3598²⁵);
- (6) Inserting a new Chapter Xa entitled: Transfer of competences to an international organisation or international body. The provisions of the proposed chapter define the conditions and procedure for transferring the competence of state authorities in certain matters to an international organisation or international body, and the procedure for taking a decision to withdraw from such an organisation or to refrain from transferring competence (Rec. 3687²⁶).

In the *Sejm* of the 7th term (2011–2015), three draft amendments to the Constitution were considered. None, however, was passed on for further work in the Senate or for the President's signature²⁷. In the *Sejm* of the 8th term (2015–2019) only one, a bill to amend the Constitution, was brought forward. A group of MPs proposed to introduce new provisions on the Constitutional Court: The Supreme Court was to rule on the constitutionality of the law on the Constitutional Court; judges of

²³ The course of the legislative process of the *Sejm* of the 6th term. Available: <https://orka.sejm.gov.pl/proc6.nsf/0/AE6D4427F5C96244C12577D1004F4092?OpenDocument> [last viewed 10.05.2022].

²⁴ The course of the legislative process of the *Sejm* of the 6th term. Available: <https://orka.sejm.gov.pl/proc6.nsf/0/E7DE10E42675758EC12577D1004F4C84?OpenDocument> [last viewed 10.05.2022].

²⁵ The course of the legislative process of the *Sejm* of the 6th term. Available: <https://orka.sejm.gov.pl/proc6.nsf/0/05F1EB6178E851A1C12577E40048933D?OpenDocument> [last viewed 10.05.2022].

²⁶ The course of the legislative process of the *Sejm* of the 6th term. Available: <https://orka.sejm.gov.pl/proc6.nsf/0/469996B32D66CFC9C12577F90047ABD6?OpenDocument> [last viewed 10.05.2022].

²⁷ List of bills amending the Constitution. Available: <https://www.sejm.gov.pl/sejm7.nsf/proces.xsp?view=S> [last viewed 10.05.2022]. One of the bills concerned the strengthening of the status of the civic legislative initiative, the introduction of an obligatory national referendum when the initiative is submitted by a group of at least 1000000 citizens, granting citizens the right to initiate amendments to the Constitution (print No. 1646). The second of the drafts concerned guaranteeing State Treasury-owned forests protection from the ownership transformation process, including commercialisation and privatisation (print No. 2374). The third one concerned the possibility to change the electoral system in elections to the *Sejm* of the Republic of Poland; the draft provided for the deletion of the requirement of proportionality of those elections (print No. 3424).

the Constitutional Court were to be elected by a 2/3 majority in the presence of at least half of the statutory number of deputies (qualified majority). It was proposed that the composition of the Constitutional Tribunal be expanded to 18 judges; the President and Vice-President of the Constitutional Tribunal were to be appointed by the President from among three candidates presented by the General Assembly of the Tribunal. The draft did not find acceptance even in the *Sejm*. Work on the draft ended at the first reading²⁸. In the current term of office, the *Sejm* received two bills on the amendment of the Constitution. The parliamentary bill on the amendment of the Constitution of the Republic of Poland concerns the proposal of a new form of the term of office of the President of the Republic of Poland. The President would be elected for one seven-year term (print No. 337²⁹). The draft bill presented by the President of the Republic of Poland amending the Constitution of the Republic of Poland concerns the introduction of a ban on the adoption of a child by a person cohabiting with a person of the same sex (print No. 456³⁰).

Summary

The Constitution is the fundamental Act, which means that it has the highest legal power. It contains the provisions concerning the character of the state, its bodies, fundament of the political, economic and social system, and it defines the rights and duties of the citizens. The Constitution, by means of the guaranties contained in it and the possibility of direct application, plays the stabilising function in relation to the reality of the state³¹. The fundamental Act first of all is a rigid act, both in the procedure for its enactment, and as regards introduction of amendments thereto. It should be highlighted that the legislative stability that is guaranteed by the Constitution manifests in a very small number of amendments to the fundamental Act since its coming into force.

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