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Proposals of Amendments to the Polish Constitution of 1997 in Responses to the 2017 Constitutional Survey

1. The basic aim of any constitutional survey is to evaluate the basic law, possibly to suggest changes that the respondent believes to be necessary or expedient. Depending on the assumptions adopted by the authors of the questionnaire, the evaluation may result directly from the partial assessments, it may be a result of a statistical summary of the selected answers to closed questions, or may be based on an analysis of answers to open questions. What matters in the third option is how detailed the questions are and how extensive and detailed the submitted answers are. In the survey we conducted in 2017 among constitutionalists (full professors, doctors habilitated and doctors) we tried to address two challenges. We wanted, firstly, to give the respondents the maximum possible freedom of expression (in the hope that they would use it), secondly, to obtain answers to specific questions of interest to us. Consequently, a decision was made to prepare a mixed questionnaire divided into two parts. In the first part, respondents could choose from a closed catalogue of answers to questions, in the second one, the same questions (in several cases modified to adapt them for the open formula) were reformulated as open ones, enabling the respondents to answer as they thought appropriate. The answers to closed questions were relatively easy to add up using statistical methods, which gave us, first of all, a coherent assessment of the existing constitution based on the criteria we had identified. Closed questions concerned, among others, the possible constitutional

amendments. We asked about the need for amendments and their form (new constitution, partial, corrective, innovative, restitutive amendment), as well as their scope (respondents selected preferred options from the set provided). But it was the answers to open questions that enabled us to know the views of Polish experts in constitutional law about not only the direction or thematic area of the future amendments to the basic law that are advisable or worth considering, but also (quite frequently) specific proposals of detailed solutions.

The topic of this paper, which is an extended version of my address given at the conference held to summarise the Constitutional Survey on 16 June 2018 at the Jagiellonian University in Krakow, is precisely the proposals of amendments to the Polish Constitution of 1997¹ contained in the answers to the open questions from our Survey.

2. Before discussing any specific proposals and ideas for amendments to the Polish Constitution of 1997 presented by Polish constitutionalists, let me make three general remarks of technical nature.

Firstly, the open formula of the Survey questions meant that in order to take into account and reliably present all proposals of amendments coming from respondents we not only had to make a reference to the question that concerned them directly (question 11), but also to pick out and analyse such proposals spread throughout answers to other questions in the open part.

Secondly, answers to the questions differed widely in terms of how detailed they were. Some answers contained extensive lists of detailed and comprehensive proposals of constitutional amendments and modifications. Other authors focused only just a few issues, discussed with varying degrees of detail. Some respondents did not provide any specific proposals of amendments, but referred generally to areas where amendments were required or desirable, sometimes just mentioning the need for change, with no specific comments ('something should be done,' 'improved somehow,' 'improve,' 'clarify,' 'reconsider,' 'eliminate,' 'correct,' *etc.*).

1 The Constitution of the Republic of Poland of 2 April 1997, Dziennik Ustaw (Official Journal of Laws of the Republic of Poland) 1997, No. 78, item 483, as amended; hereinafter referred to as: "Constitution."

Thirdly, due to the fact that we have already published an article containing a fairly detailed discussion of the responses to the survey, question by question, in a Polish law journal “Państwo i Prawo,”² in this paper I decided to adopt different formal assumptions. I systematised the material to be presented according to two criteria: the problems and then the statistics, based on the frequency with which respondents suggested amendment proposals. To facilitate presenting the results and to better show the characteristic trends, I added a few charts to my text (and conference address). As I expected, this form proved good enough to encourage questions and comments from conference participants, with references to examples I had quoted and trends I had observed. Let me also add that this presentation is not limited to the most popular answers and proposals from Survey respondents. In this paper, I also included solutions suggested by single respondents, especially if they were original, individual or discussed in more detail.

The total number of respondents in our survey was 72, answers to the closed part were submitted by 70 of them, while 32 persons provided answers to the open part, which I discuss here. It is worth mentioning that our respondents represented all Polish academic centres where university law faculties exist and several private universities.

3. I would like to begin my discussion of proposals of amendments to the Constitution of 1997 submitted by Survey respondents with a general presentation of the thematic areas these proposals concerned. They are presented on the Chart. 1.

It is clear that the highest number of proposed amendments concerned institutions of direct democracy. A breakdown of the specific proposals submitted by respondents in this thematic area, broken down by their frequency, is presented on the Chart 2.

2 See M. Florczak-Wątor, P. Radziejewicz, M.M. Wiszowaty, *Ankieta o Konstytucji Rzeczypospolitej Polskiej. Wyniki badań przeprowadzonych wśród przedstawicieli nauki prawa konstytucyjnego w 2017 r.* [eng. *Survey on the Constitution of the Republic of Poland. The results of research conducted in 2017 among Polish constitutional law scholars*], “Państwo i Prawo” 2018, nr 6, p. 3–35.

CHART 1. THEMATIC AND PROBLEMATIC AREAS OF AMENDMENTS

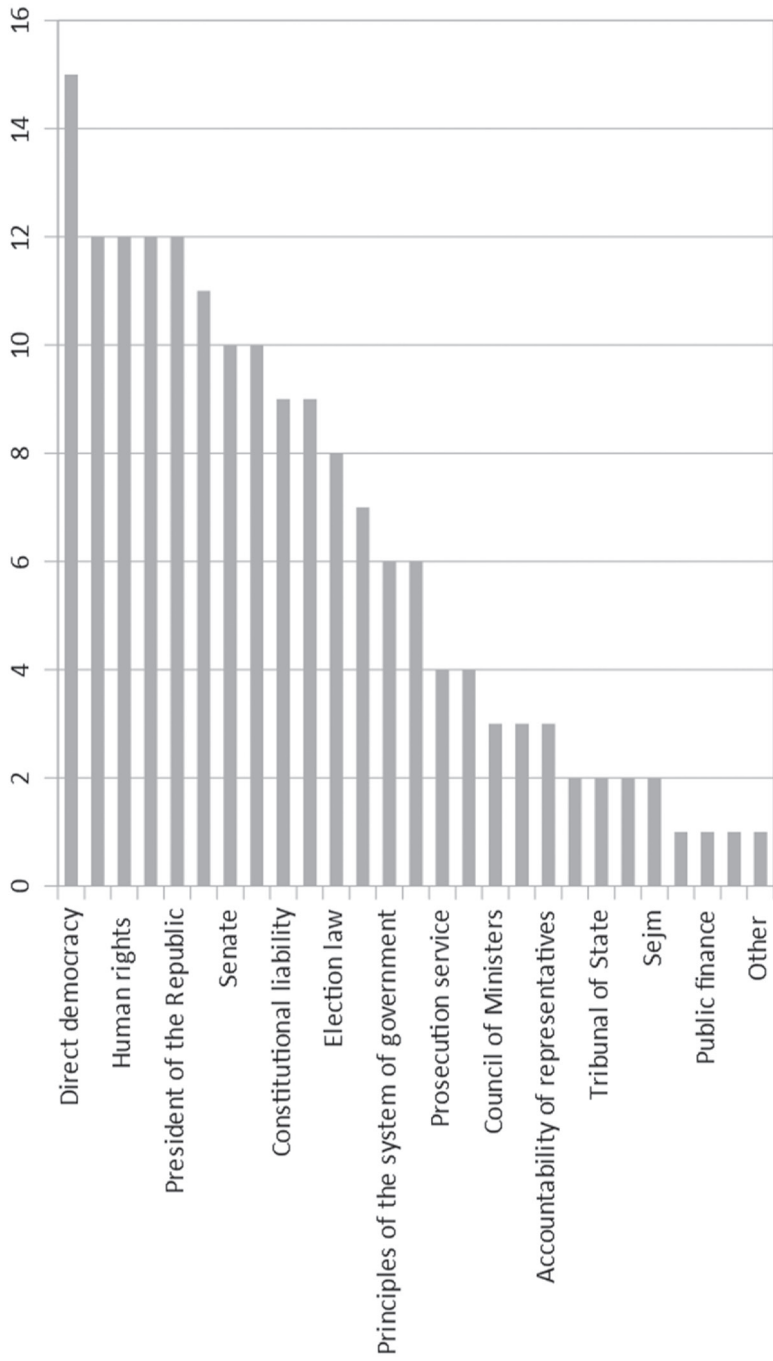
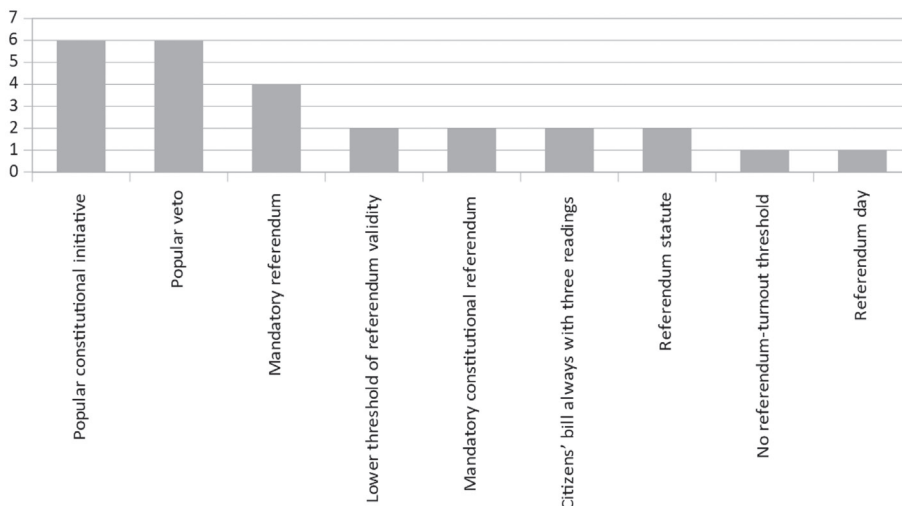


CHART 2. PROPOSALS OF AMENDMENTS TO THE POLISH CONSTITUTION OF 1997 IN THE AREA OF DIRECT DEMOCRACY



Two of the most frequent proposals concerned adding more institutions of direct democracy to the list contained in the Polish Constitution. The first one was citizens' or popular constitutional initiative, that is, granting a specific group of citizens the right to submit a bill to amend the constitution, resulting in the obligation on the part of the Marshal of the Sejm to order that the bill be considered. Currently, citizens do not have such a right. The second most frequent proposal in the area in question concerned the introduction of citizens' or popular veto: a complete novelty in the Polish constitutional order and *acquis constitutionnel*. It enables repealing a statute by a referendum held upon petition signed by an adequate number of citizens.

The vast majority of proposals coming from respondents concerned the referendum. Four respondents suggested that if a specific number of citizens' signatures were collected, holding a nationwide referendum should be obligatory. This is a clear reference to requests formulated in the public debate for well over a year. Subsequent proposals concerned lowering the threshold for a nationwide referendum to be valid from the the current over 50% threshold, or even its complete elimination in case of local referendums. Both proposals correspond to similar

statements from international expert groups, beginning with the European Commission for Democracy through Law (the so-called Venice Commission).³ It is worthwhile to remind that failure to meet the turnout requirement is single main reason for invalidity of referendums in Poland, especially those held at the local level. The last three proposals – in terms of frequency with which respondents submitted them – concerned: establishing a referendum day, that is, organising all referendums once a year, for instance on a national holiday (in Poland this proposal is endorsed by the think-tank of the Jagiellonian Club organisation);⁴ adding a referendum statute – that is, a statute adopted in a referendum – to the list of sources of generally applicable law; finally – establishing a requirement of holding a constitutional referendum to approve each constitutional amendment and the ratification of an international agreement that provides for transfer of some sovereign powers of the state to an international organisation. The only proposal concerning the so-called popular initiative, or citizens' legislative initiative (other than extending such initiative to include constitutional amendments), assumes introducing in the constitution an obligation to carry out the whole legislative procedure with three readings of each citizens' bill submitted for further parliamentary work. The aim is to prevent the bills being rejected as soon as during the first reading at the Sejm, which has happened so far.

4. The second most frequently mentioned issue was an 'EU Chapter,' that is, inserting a set of provisions to regulate issues connected with Poland's membership in the European Union into the Constitution. Some respondents referred directly to the proposals of relevant amendments to the basic law submitted by the Sejm of the 6th term, which eventually had not been passed.⁵

3 See 'Code of Good Practice on Referendums' adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and by the Venice Commission at its 70th Plenary Session (Venice, 16–17 March 2007), Strasbourg, 19 March 2007, Study No. 371/2006, CDL AD (2007) 008.

4 See P. Kaszczyszyn, *Jak upodmiotowić obywateli. Propozycja Dnia Referendalnego*, Jagiellonian Club, 5 September 2015, < <https://klubjagiellonski.pl/2015/09/05/jak-upodmiotowic-obywateli-propozycja-dnia-referendalnego> >.

5 See R. Balicki, *Rozdział europejski w polskiej Konstytucji – rzecz o niezrealizowanym kompromisie konstytucyjnym*, in: *Prawo Unii Europejskiej a prawo konstytucyjne państw członkowskich*, red. S. Dudziuk, N. Półtorak, Warszawa 2013.

5. The third most frequent area where respondents suggested amendments was human rights in the broad sense. The submitted proposals included both reducing and extending/clarifying the existing constitutional regulations. The first group included the suggestion of reducing the number of references to statutes in Chapter II, which is devoted to the rights, freedoms and obligations of a person and citizen (according to this respondent they diminished the value of constitutional regulations), as well as reducing the programmatic norms contained in this chapter (no specific provisions were mentioned). But the greatest number of proposals concerned enlarging the constitutional catalogue of human rights and guarantees thereof.

The proposals of new rights included: the right of resistance, the right to audit authorities, to monitor their elections, to criticise public authorities, to decide about public matters, the right to social security based on six principles-pillars: solidarity, mandatory character, universality, fairness, efficiency, transparency, employees' right to participation in the management of the enterprise, the right of access to clean water, the right to housing.

Among the proposals of specific guarantees of human rights we can mention: guaranteeing the right to apply conscience clauses; confirmation of horizontal application of human rights (e.g the right to equal treatment); a proposal to constitutionalise employment protection by establishing a prohibition of precarisation through guaranteeing a working week of no more than 40 hours; the right to fair remuneration for work ensuring decent existence. Other respondents' proposals included establishing a constitutional guarantee of biosafety (prohibition of cultivation of and trade in genetically modified foods, with the permitted exceptions specified in statutory law; mandatory consultations in case of large investments affecting the environment; prohibition of risky or experimental biotechnological projects, prohibition of importing hazardous waste); the request for repealing Article 81 (which limits the scope of protection of legal rights); constitutional protection of intellectual property. Other proposals in the area of human rights and their safeguards include those to establish the principle of state ownership of non-renewable natural resources; to introduce a constitutional obligation to guarantee energy sovereignty of the state; to provide equal protection to all forms of ownership; to guarantee legal protection of human life from conception; finally, to protect citizens against excessive fiscalism of the state.

Among the proposals of new general guarantees of human rights, there appeared two proposals to establish special formal guarantees: a separate complaint concerning an act or omission of a state authority that was inconsistent with the constitution and a special complaint to a general court concerning an infringement of human rights.

6. The next issue among the ones that respondents mentioned most frequently was the introduction of unchangeable norms into the Polish Constitution. We partially suggested this solution to our respondents by asking whether it was advisable. The shares of affirmative and negative answers to the open question were similar to the answers to the closed question concerning the same topic. It was, respectively, 55% answers in favour of unchangeable norms compared to 45% against them and 51% in favour compared to 49% against. In the open formula of answers, apart from expressing support for the idea of rigidifying or securing selected constitutional norms by making them unchangeable, around a dozen authors were able to identify which regulations should be given this attribute. To begin with, it is worthwhile to observe that, when mentioning specific examples, all supporters of unchangeable norms in the Polish Constitution identified only norms that already existed in the Constitution. In principle nobody suggested adding a new constitutional regulation and making it unchangeable. Only one respondent's statement could be treated as such a suggestion. This person wanted an unchangeable provision determining a 'national, uniform, indivisible, and independent character of the state.' The Polish Constitution does not contain a provision formulated in such a way, but these features do correspond to existing regulations of the basic law. Among the proposals of provisions that should be granted the status of unchangeable norms, the ones that came equal first in terms of frequency were: Article 2 and the principles of the state system it expresses, including the rule of law; Article 30 (inherent dignity of the person) and Article 10.1 (separation of powers and checks and balances). These three were followed (in the order from most to least frequent) by: Article 8.1 (supreme legal force of the constitution); Article 32 (equality and prohibition of discrimination); Article 31 and particularly its paragraph 3 (freedom and limits of human rights); Article 235 (procedure of constitutional amendment); republican form

of state; Article 7 (principle of legalism); Article 62 (suffrage); obligation of holding elections regularly; unitary character of the state; territorial integrity; Polish as the official language.

7. Among the central authorities regulated in the constitution, the President of the Republic was the one that the greatest number of respondents submitted remarks on. Most respondents (though not the majority) suggested changing the principles of election of the president, by replacing universal election with a parliamentary one. Two respondents suggested a radical change of the president's systemic position and limiting his powers to the so-called traditional powers of the head of state. Also two respondents wanted to see clarification of the notion of the 'Supreme Commander of the Army,' which would eliminate the risk of future conflicts between the president and the Minister of Defence. The remaining proposals were made by one respondent each. They were relatively numerous and formed three groups: clarifications of the existing regulation; partial and innovative changes of the regulation, and ones concerning the problem of substituting the president. The first group included demands for clarifying the expression 'ensure observance of the Constitution' (Article 126.2) and extending the list of presidential prerogatives contained in Article 144 to include: submitting bills to amend the constitution; withdrawing such bills, and making proposals of amendments to such bills. One respondent has recommended correcting the constitutional regulations of substituting the president *sede vacante*, so that substitution continues until the new president takes office and not, as the currently applicable provision states, 'until the time of election' (Article 131.2). The person who suggested further clarification of the President's position *vis-à-vis* courts (e.g. in the context of appointing judges) did not mention any specific solutions. Although the demand that the 'understanding of the president's powers be de-monarchised' concerns the sphere of political practice, rather than legal regulation, it should be seen as addressed not only to the constitution maker, but also to constitutionalists, who are partially responsible for the monarchisation.

8. The second place in the ranking of public authorities whose constitutional regulation needed to change was occupied by the Constitutional Tribunal.

The biggest part of proposals from this group concerned the need for a new constitutional regulation that would be a response to the current situation of the ‘Tribunal being deprived of its legitimacy and its authority.’ Yet the respondents did not identify any specific proposals. Several participants of the survey recommended changing the procedure of electing Tribunal justices, this time suggesting specific solutions: raising the threshold of the majority required for a candidate to be elected a judge and regulating in the Constitution, rather than in the Standing Orders of the Sejm, which entities should have the right to nominate candidates for justices, especially that some respondents believed MPs should not nominate any. Two respondents supported each of the following proposals: granting the Tribunal the power to give abstract, universally binding interpretations of statutes; fixing a maximum period for examining an application (at least with respect to preventive review), and extending the Tribunal’s powers to include examination of not only enactments, but also acts of application of law. Another proposal was to empower the Tribunal to conduct mandatory preventive review of the standing orders of both chambers of the parliament and their amendments. Other proposals, put forward by one respondent each, concerned: mandatory review of the constitutionality of international agreements that provide for transfer of some sovereign powers of the state to an international organisation and mandatory review of statutes and amendments to statutes regulating the state’s system of government by the Tribunal. With regard to the Tribunal’s structure and activity, the following proposals were formulated: clarifying the effects and types of judgments of the Tribunal; constitutionalising the principle that the Tribunal adopts judgments by a majority of 2/3 of votes, as well as regulating the term of office of the President of the Tribunal (3 years). Another suggestion concerning the Constitutional Tribunal’s systemic position was to narrow down its powers by transferring the Tribunal’s power to review the constitutionality of political parties’ activities to the Supreme Court. The last proposal from this group concerned introducing mandatory *ex-ante* review by the Tribunal of the constitutionality of questions in a nationwide referendum held in matters of particular importance to the state (Article 125).

The issue of key importance in the area at point was the constitutional complaint. Many respondents suggested necessary amendments

concerning the complaint, first of all, to extend its scope and the group of entities entitled to submit constitutional complaints. The specific demands included: enabling challenging a final judgment issued in the applicant's case by means of constitutional complaint (referred to generally as 'adopting the German model') and, consequently, also granting the Constitutional Tribunal the power to issue reformatory judgments on the merits of the case that the complaint concerned. Other postulates were: to enable challenging legislative omissions before the Tribunal; to abolish the limitation of the scope of complaint specified in Article 79.2 of the Constitution (which should be reconsidered in the light of the current migration crisis), and also to facilitate the lodging of constitutional complaints by removing the requirement that the applicant exhaust the available legal remedies.

9. The third most popular body was the Senate. Most respondents saw the need to reform the upper chamber of the parliament, the majority of proposals concerning changes in the Senate's composition. The dominant opinion was that it should have the character of a local government chamber, that is, representation of authorities of local government, or that the right to stand for election should be granted to persons who have held functions in local authorities. Some respondents suggested a broader formula of the chamber's composition as a representation of interest groups. Few chose the option of granting seats in the Senate – like in Italy – to former presidents, suggesting that former PMs should have seats, too. Other proposals concerning the Senate's structure included separating its term from that of the Sejm and raising the minimum age of candidates for Senators. A suggestion was also made that the Senate (after the change in the principles of electing it) should have new powers, such as the right of legislative veto, like the German upper chamber, or the right to give a vote of no confidence to the government. The most radical proposal, to completely abolish the Senate, has also appeared.

10. Respondents also expressed their views about the separation of powers, with 20% drawing attention to the need for a clearer boundary between the powers of the government and those of the president, and a better regulation of their mutual relations. This proposal has been recurring in Polish academic literature at least since 2009, when a serious crisis

occurred in the relationships between the government and the president, ending in a competence dispute settled by the Constitutional Tribunal.⁶ The second place belongs to proposals for a greater separation of the judiciary from the other two branches, even though not only is it separated in Article 10 of the Polish Constitution, but also described in Article 173 as ‘constitut[ing] a separate power and [...] independent of other branches of power.’ Individual respondents, when discussing the separation of powers in the constitution, suggested that the constitution should prohibit combining the office of an MP and the function of a minister (possibly with the exception of the prime minister), that the number of powers should be increased to more than the current three mentioned in Article 10 of the Constitution, and that the Constitutional Tribunal should not be part of the judicial branch. One respondent presented a more detailed proposal for changing the philosophy of the separation of powers, specifying that it should only be considered once work on a new constitution begins. He proposed that Montesquieu’s separation of powers that no longer matches the reality be replaced with a new division of powers into: the governing, the opposing, and the neutral power.

11. Compared to the earlier scant academic interest in this area, the issue of constitutional liability was relatively broadly discussed in the respondents’ answers. Contrary to what could have been expected, considering the existing Polish legal literature, it was not the proposal of abolishing the Tribunal of State that occupied the first place in terms of frequency. The most frequent proposal was appointing a special spokesperson of constitutional liability, that is, a non-partisan public authority tasked with initiating proceedings concerning constitutional liability. This can be seen as a result of criticism of the existing Polish mechanism and the authority set up to enforce it, which has long appeared in legal literature. Three respondents stressed the need to extend the list of constitutional torts to include ‘evading the constitution.’ A related proposal demanded a broader list of constitutional torts (though without specific examples). The same number of authors were in favour of collective constitutional liability for decisions made collectively. Those supporting the abolition

⁶ See decision of the Constitutional Tribunal of 20 May 2009, Kpt 2/08, OTK ZU 2009, series A, No. 5, item 78.

of the Tribunal of State were divided upon what body its powers should be transferred to. The Supreme Court and the Constitutional Tribunal were favoured by two respondents each. One person supported granting the right to adjudicate in matters of constitutional liability to criminal courts (and one person opposed this solution).

12. Respondents devoted special attention to the problems of election law. The single most frequent suggestion in this thematic area was to constitutionalise the State Electoral Commission. Almost every fifth respondent was in favour of this solution. Other proposals were: a constitutional prohibition of amending electoral laws less than a year before an election; a prohibition of establishing electoral thresholds in elections to the Sejm and authorities of local government; a constitutional age limit for candidates at 70 years. Individual respondents suggested clarifying the grounds for depriving a person of public rights (resulting in loss of suffrage) in the constitution; establishing an additional citizens' duty to vote in the constitution; guaranteeing electoral rights (the right to vote and to stand for election) in elections to Polish public authorities for EU citizens who are not Polish citizens.

13. The second last thematic area where Survey respondents submitted proposals of constitutional amendments comprised the sources of law. In this matter, the following proposals were made (usually by one author each): extending the catalogue of sources of generally applicable law to include collective labour agreements, organic statutes and regulations having the force of statutes issued by the prime minister in matters not covered by organic statutes. Other proposals concerned granting the right of legislative initiative (limited to the scope of their activity) to the State Electoral Commission and the Chief Labour Inspectorate; granting special legal status in the constitution, as a source of independence and autonomy (following the example of the Sejm and the Senate), to standing orders of the following bodies: the Supreme Court, the Supreme Administrative Court, the Constitutional Tribunal, the Tribunal of State, the Supreme Audit Chamber, the National Radio and Television Council; granting the power to issue instruments of universally applicable law (regulations) to selected authorities, including the presidents of the Supreme Audit Chamber, the National

Bank of Poland and the State Electoral Commission; introducing a constitutional prohibition of entering into international agreements concerning specific topics, for instance ones limiting access to healthcare, medicines, or technical and scientific development.

14. Respondents considered that the procedure of constitutional amendments also required changes. Two proposals were made most frequently. Firstly, making it more difficult to amend the constitution by introducing at least the same requirements as for expression of consent for the transfer of powers to an international organisation, as well as raising the required quorum (so that – as explained – the present MPs of the governing majority could not take advantage of the absence of opposition MPs). Secondly (as mentioned earlier), granting the right of constitutional initiative to citizens. One of the respondents described the idea in more detail. The threshold of the required number of signatures supporting a citizen's bill to amend the constitution should be 500,000 citizens with the right to vote in a general election. A suggestion was also made that a sort of geographical parity should be introduced, that is, a requirement of appropriate, proportional geographic distribution of support. According to part of the respondents, each constitutional amendment should be subject to approval in a referendum. A milder version of this proposal, presented by another respondent, was a mandatory referendum in cases of amendments to provisions from Chapters I, II or XII, while in cases of amendments to any other chapter the referendums would be held upon a motion of the body vested with the right of legislative initiative. Yet another suggestion went back to the first Polish Constitution of 3 May 1791, suggesting inclusion in the constitution of an obligation of revising it every 20 years.

15. I would like to end this lengthy list with selected proposals that do not concern any of the above thematic areas, but for many reasons deserve a mention. This was a very diverse set, where the only common feature was the fact that all proposals in it concerned the Polish Constitution of 1997 and were submitted by constitutional law experts.

Respondents in the Survey suggested in their answers: abolishing the formal immunity of Members of the Sejm and Senators; deconstitution-alising – or in a more radical version even abolishing – the Commissioner

for Children's Rights, while adequately strengthening the systemic status of the Commissioner for Citizen's Rights (Ombudsman); abolishing the National Radio and Television Council; strengthening the opposition's rights in the Sejm; establishing a principle of purely professional parliamentary mandate; separating the term of the Tribunal of State from that of the Sejm, along with a considerable increase of the substantive requirements pertaining to TS judges; establishing a prohibition of ministerial supervision over courts; correcting errors in the names of state symbols (for instance, the national emblem described as "godło" (a charge) should be called "herb" (a coat-of-arms)) constitutionalising the prosecution service (as well as inserting a chapter or sub-chapter devoted to it in the constitution) and enshrining the principle that the offices of the prosecutor general and the minister of justice cannot be combined in the constitution.

Other proposals put forward by respondents concerned: constitutionalising the principle that the leader of the party which wins the general election becomes the prime minister; establishing a constitutional guarantee of financing political parties from the state budget; establishing a constitutional principle that all activity (acts and omissions) of public authorities is subject to review by independent courts; clarifying the contents of Article 18 to provide expressly that the constitutional protection of opposite-sex marriages does not exclude the possibility of institutionalisation (legal regulation) of same-sex relationships. In the end, let me signal that one respondent (but not myself) suggested considering the introducing a system of limited mixed monarchy in Poland, but failed to provide any details.⁷

16. The broad and rich set of proposals for amendments put forward by constitutionalists may lead to the conclusion that such amendments are needed in the Polish Constitution of 1997. Many of the submitted proposals aimed to correct errors that were noticed or mechanisms which did not stand the test of time, others were innovative changes, intended to establish new

⁷ A similar proposal, but with a broader discussion, was made in the constitutional survey organised by Law and Justice party by A. Ławniczak, who did not take part in our survey. See A. Ławniczak, in: *Ankieta konstytucyjna 2017 rozpisana przez Prawo i Sprawiedliwość w dwudziestolecie uchwalenia Konstytucji RP*, red. A. Łabno, B. Banaszak, B. Szmulik, Warszawa 2018, p. 160 ff.; also see a discussion in: M.M. Wiszowaty, *Polska „monarchią zrąjonalizowaną”? O propozycji ustroju monarchicznego dla Polski w Ankiecie konstytucyjnej „Prawa i Sprawiedliwości”*, Gdańsk, Kiev 2018 (forthcoming).

institutions or modify the existing ones in order to make them more efficient. It is worthwhile to mention that numerous respondents stressed that their proposals were a result of their earlier reflections and analyses, often going back many years. But there is no doubt, as even a cursory reading of the survey responses proves, that part of the proposals are responses to the shock in the political system (which some call a crisis) that Poland is currently experiencing. Some of the respondents declared openly that for them 2015 was a watershed year, which changed their perception of the importance of specific constitutional issues. Now they indicate different constitutional regulations that, in their opinion, deserve or require to be amended. For instance, in the past they did not consider it was an important and real problem to counteract accumulation of power, strengthen the separation of powers or constitutional liability or separate the judiciary more strongly, make it more independent, and guarantee its separate character.

It is also worthwhile to mention that many respondents held that the numerous deficiencies found in Poland's recent constitutional practice did not result from the contents of the Constitution, but from a certain way in which it was applied, or rather not applied, or even violated. A constitutional amendment cannot remedy problems caused by insufficient legal or political culture.

One of the most important conclusions from our survey, supported by the vast majority of respondents, is that whereas the Polish Constitution of 1997 does require amendments, they should, firstly, be only partial amendments, rather than a new constitution, and, secondly, that they should not be introduced in the current political and systemic situation.

Summary

This paper is an extended version of my address at the conference held to summarise the Constitutional Survey on 16 June 2018 at the Jagiellonian University in Krakow. It is devoted to proposals for amendments to the Polish Constitution of 1997 contained in the answers to the open questions from the Constitutional Survey we conducted in 2017 among constitutionalists (full professors, doctors habilitated and doctors).

The broad and rich set of proposals for amendments put forward by constitutionalists may lead to the conclusion that such amendments are needed

in the Polish Constitution of 1997. Many respondents held that the numerous deficiencies found in Poland's recent constitutional practice did not result from the contents of the Constitution, but from a certain way in which it was applied, or rather not applied, or even violated. A constitutional amendment cannot remedy problems caused by insufficient legal or political culture. One of the most important conclusions from our survey, supported by the vast majority of respondents, is that whereas the Polish Constitution of 1997 does require amendments, they should, firstly, be only partial amendments, rather than a new constitution, and, secondly, that they should not be introduced in the current political and systemic situation.

Keywords: constitution, constitutional law, constitutional amendment, Poland, direct democracy, constitutional moment, constitutional crisis, constitutional survey, Senate, President, constitutional tribunal, unchangeable norms, sources of law

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