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Evaluation of the Constitution of the Republic of Poland in the Constitutional Survey – Merits of the Current Basic Law

1. One of the basic reasons for the Constitutional Survey of 2017 conducted amongst experts in constitutional law in Poland¹ was to gather opinions on the present Constitution,² its merits and flaws, and the practice of its application. The need for introducing new constitutional solutions cannot be examined without a trustworthy evaluation of the existing Constitutional provisions. The Constitution is not a legislative act that can be adjusted at will to shadow the requirements of the current political situation; on the contrary, it is a document that sets out a permanent legal framework of state policy. Therefore, change of the parliamentary majority which is often concordant with a shift in political goals may result in adjustments to statutory laws and secondary legislation, however, it is not a sufficient rationale to justify amending the Constitution. The latter can be justified only by the conviction that solutions once adopted by the nation have failed in practice and must therefore be corrected or replaced. Such a belief should come as a product of a reliable analysis of the existing solutions and their application in practice. After all,

1 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.

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

the Constitution cannot be amended recklessly, as it stands as the political foundation of the state. The foundations of a building stay where they are whenever a new tenant moves into a house or a new property administrator is appointed. In such case it is possible, and sometimes even highly desirable, to radically change the decor of the house or its fit-out, yet replacement of the foundations should be considered only when the existing ones no longer guarantee stability and strength of the building. Change of the foundations in fact implies that the entire house must be built again from scratch. Likewise, in the case of the Constitution, its functioning should first be monitored and assessed, and only then the need to perfect those solutions which have not scored high in the evaluation can be considered. Replacement of the Constitution with a new basic law should only be contemplated as a last resort solution.

In this paper which refers to the content of the speech delivered by me at a conference in Cracow on 16 June 2018,³ I would like to present a fragmented assessment of the Constitution in the light of answers given by respondents to the above-mentioned Constitutional Survey. This assessment will focus on the merits and strengths of this legislative act. Its shortcomings and proposed amendments have been presented in another paper which is complementary to mine.⁴

2. Out of eleven questions asked in the so-called open part of the Constitutional Survey,⁵ one question directly concerned the aspect referred to in the title of this paper, namely the merits of the Constitution currently in force. It was the question numbered 7 with the following wording: ‘What other merits and flaws of the currently binding Constitution deserve

3 The conference was held at the Jagiellonian University and was devoted to the presentation of the results of the Constitutional Survey. For more information on the conference, see J. Pyłko, *Sprawozdanie z konferencji „Ankieta o Konstytucji Rzeczypospolitej Polskiej”* (Kraków, 16 czerwca 2018 r.) [eng. *Report from the conference ‘Survey on the Constitution of the Republic of Poland’* (Cracow, 16 June 2018)], “Przegląd Konstytucyjny” 2018, nr 4.

4 See M.M. Wiszowaty, *Proposals of Amendments to the Polish Constitution of 1997 in Responses to the 2017 Constitutional Survey*, “Przegląd Konstytucyjny” 2018, nr 4.

5 The Constitutional Survey consisted of two parts: a closed questionnaire where one of the presented answers was to be selected and an open questionnaire where the rationale for the choice could be presented. For more information on the structure of the Constitutional Survey and its questions, see P. Radziejewicz, *Working Assumptions and Statistical Analysis of the Constitutional Survey*, “Przegląd Konstytucyjny” 2018, nr 4.

a mention?' On the one hand, this question was an invitation to an in-depth evaluation of the existing constitutional provisions, including both those which were positively assessed as well as those solutions that should be criticised. On the other hand, it was clear from the content of this question itself that the survey authors expected the respondents to point out the merits and shortcomings of the current Constitution also in their answers to other questions, particularly those preceding the above-mentioned question no. 7. In fact the first five questions of the survey undoubtedly required that respondents evaluate specific solutions adopted by the Polish legislators of the basic law. In the survey we asked whether the Constitution 'sufficiently protects freedoms and rights' (question no. 1), whether the people 'have a sufficient degree of power' (question no. 2), whether the separation of powers 'was as it should be'? (question no. 3), whether the Constitution 'sufficiently counteracts the concentration of power' (question no. 4) and whether it 'properly regulates the mechanisms of accountability' (question no. 5). Each of those questions therefore contained evaluative terms ('sufficiently,' 'sufficient,' 'as it should be,' 'sufficiently,' 'properly') that compelled the respondents to evaluate the specific standards of protection.

The grouping of both merits and flaws of the current Constitution within a single question in the survey encouraged many respondents to comprehensively enumerate, in their answer to question no. 7, the aspects which they judged to be defective and to make a general reference to solutions which they considered positive. The dominance of merits over the flaws of the Constitution was regarded self-evident and not requiring any broader comment by almost all respondents. This approach manifested itself in a comment made by one of the respondents: 'In the survey, I focused above all on flaws, taking no notice of the merits. The Constitution has by far more merits than flaws.' Hence, paradoxically, although the overall assessment of the Constitution was positive, as presented by me in the further sections of this paper, it was not the merits, but the flaws of the Constitution that were given greater prominence in answers to question no. 7. This approach should not, however, come as a surprise also because the Constitutional Survey was answered by representatives of the Polish science of constitutional law (professors, habilitated doctors and doctors of juridical science) who focus on problematic issues in their scientific research rather than on the obvious and commonly accepted ones.

For that reason, although in the opinion of respondents merits outweigh flaws, few explicit merits have in fact been mentioned. Two accomplishments were most frequently named, namely the correct axiological foundations of the Constitution and the proper catalogue of rights and freedoms of individuals as defined by the law makers. The respondents also considered the introduction of the principle of direct application of the Constitution as one of its merits, as it has contributed to a greater constitutional awareness amongst both judges and citizens, as well as the closed sources of universally binding laws, which has enhanced legal certainty and legal security.

As far as the above-mentioned axiological foundations are concerned, attention was drawn to fundamental values typical of a liberal democracy being as if encoded in the Constitution. These values have not been presented by the respondents in a comprehensive way. Instead, the most important ones that to the greatest extent predetermine the axiology of the Polish basic law were mentioned in responses to the Survey. According to respondents, these values characteristic of a liberal-democratic state included human dignity being the source of human rights and freedoms, the common good, democracy, and the rule of law. It was emphasized that these values formed a solid foundation to be relied on by the Polish political and legal culture.

More specific rationale was provided by the respondents in reference to the right catalogue of rights and freedoms of individuals. Three arguments in reference to this aspect were quite often provided in responses to the Constitutional Survey. Firstly, it was highlighted that the lawmakers adopted a pro-citizen and pro-human approach in the relation between an individual and the state, which properly determined the shape of the constitutional regulations on individual rights and freedoms. As one of the respondents stated, this regulation 'stands as a good basis for «developing» a sub-constitutional legal order.' Secondly, it was mentioned that the Constitution meets the requirements of international law. The aspect of compatibility of constitutional standards of protecting human rights with conventions and the European Union standards has often been raised by respondents and at the same time commonly presented as one of the most important merits of the current Constitution. Thirdly, many respondents noted that the catalogue of constitutional rights and freedoms was extensive and comprehensive. Although voices calling for modification of the constitutional regulation of social rights (including, among others,

the abandonment of programme norms or excessive number of statutory references), appeared, the very fact that these provisions were incorporated in the Constitution did not raise any major objections. The manner of regulating the normative content of particular rights and freedoms of individuals was not challenged, however, the need for strengthening their protection was postulated. In particular, the constitutional complaint was mentioned by many respondents as the measure aimed at the protection of the constitutional rights and freedoms that needs to be rethought. Extension of the catalogue of constitutional rights and freedoms to include rights that predetermine the existence and development of a civil society, such as the right to resistance, the right to decide on public matters, the right to control and criticise the authorities, the right to monitor the manner of their election and their actions, was as also postulated.

The solutions which have not been criticized and thus have hardly been referred to when specific changes were being proposed should be regarded as aspects which were positively assessed by respondents to the Constitutional Survey. The regulations in question concern the supreme principles of the state political and government system, the state of emergency, public finances and local self-government. The only recurring problem was the strengthening of guarantees of protection of these principles, rights and institutions in view of the recent instances of their violation.

3. No separate question in the Constitutional Survey concerning a general assessment of the current Constitution was asked, nonetheless, this evaluation can be quite easily derived from respondents' answers to other questions.

Thus, it must be noted that the overall assessment of the Constitution by representatives of the Polish constitutional law science is positive. Some respondents explicitly stated that the merits of the Constitution outweigh its flaws and that the Constitution with all the legal solutions it embodies is an advantage in itself. Those respondents who were more reserved in their evaluation pointed to the practice of amending the Constitution to date. During the twenty years of its existence, none of the solutions contained in the Constitution was considered to be dysfunctional to the extent that it would require an immediate intervention by the lawmakers. The two amendments of the Constitution that have been introduced so far are an example of amendments that have not so much corrected the Constitutional

regulations as perfected them and adapted them to the needs that arose since its entry into force. Accordingly, the first of these amendments,⁶ namely the introduction of exceptions to the ban on extradition of a Polish citizen to the European Union Member States came as a result of Poland's accession to the European Union and the need to harmonize the Polish law to the requirements of the European Arrest Warrant mechanism. On the other hand, the second amendment of the Constitution⁷ which deprived persons sentenced by a final and binding judgement to imprisonment for an intentional crime prosecuted by public indictment of those persons' right to stand as candidates for elections to the Sejm or to the Senate, has fulfilled social expectations that emerged in the second decade of the effective force of the basic law. Both these amendments were therefore not intended to rectify solutions that were found to be dysfunctional, but to refine and complete the existing legal framework.

The high assessment of the Constitution as such can also be derived from the combination of answers to questions concerning solutions aimed at protecting Constitutional provisions in their current form. These are solutions which, on the one hand, are intended to safeguard the stability of the Constitution in terms of its procedural aspects by preventing it from being amended in a reckless and thoughtless way subordinate to the requirements of the current political situation, and, on the other hand, which operate as a guarantee of the constancy of the provisions of the Constitution which are considered to be of superior importance. The need to reinforce

6 Amendment of the wording of Article 55 of the Constitution effected by virtue of the Act of 8 September 2006 on Amendment of the Constitution of the Republic of Poland (Dz.U. 2006, No. 200, item 1471) by way of implementation of the judgement of the Constitutional Tribunal of 27 April 2005, P 1/05, OTK ZU 2005, series A, No. 4, item 42.

7 It refers to adding subparagraph 3 to Article 99 of the Constitution by virtue of the Act of 7 May 2009 on Amendment of the Constitution of the Republic of Poland (Dz.U. 2009, No. 114, item 946). As it was stated in the explanatory memorandum to the draft Act, 'The proposed amendment of the Constitution of the Republic of Poland is aimed at fulfilling public expectations that no persons sentenced by a final and binding judgement for an intentional crime prosecuted by public indictment are elected to the Lower House of the Parliament (the Sejm) or the Senate. Citizens almost generally share the view that law should not be made by lawbreakers [...]. The amendment of the Constitution eliminating offenders from the Polish Parliament will contribute to improving the image of the legislative authorities. It would be difficult for Poles to accept that those who violate the law and are certified to having done so in the form of a final and binding sentence are involved in the law-making process.'

the substantive and procedural protection of the Constitution expressed by many respondents undoubtedly arose from the belief that the Constitution in its present form deserves such protection.

As many as 91% experts of the constitutional law answered positively to the question located in the closed part of the Constitutional Survey as to whether the procedure for amending the Constitution, laid down in Chapter XII, meets the requirement of stability of the basic law. Answers to the same question in the open part of the Constitutional Survey reveal that those respondents who were of the opposite opinion generally postulated an even greater rigidity of the Constitution by introducing a higher quorum or a higher qualified majority needed for its amendment. Some of the respondents also mentioned the need to increase the influence of citizens on the procedure of amending the Constitution by granting a legislative initiative to the people and introducing an obligatory referendum to approve the amendments. All these postulates were therefore aimed at tightening the prerequisites for amending the Constitution, which only proves that Polish constitutional law experts are generally aware of the value embodied by the stability and constancy of the Constitution. No expert has voiced an opinion that the conditions which must be met to amend the Constitution are excessive or advocated the introduction of measures to simplify its amendment. One of the respondents has even stated that the unsuccessful attempts to amend the Constitution so far originated not from an excessive rigour of its amending procedures, but from the 'inability of the political class to build a consensus around Constitutional amendment.'

In turn, 51% of the respondents gave a positive and 49% a negative answer in response to the question whether the Constitution should contain provisions with stronger substantive rigidity. In their answers, the former highlighted that unamendable provisions could reinforce the supremacy of the Constitution and contribute to greater political stability. It was advocated that such solution should apply to the principle of a democratic state governed by the rule of law, sovereignty of the nation, the republican form of government, the principle of legalism, the tri-separation of powers, the inviolability of human dignity, equality before the law, and the obligation to hold periodic elections. It was pointed out that:

defining the unamendable provisions *per se* will not eliminate the risk of passing laws inconsistent with the '*coto vedado*,' but it should be regarded a qualified form of a constitutional delict connected with stricter legal accountability of the President and, should the Constitution be amended, of the Speaker of the Sejm and the Prime Minister.

On the other hand, opponents of the idea of introducing unamendable provisions into the Constitution were generally sceptical about the effectiveness of this solution and claimed with reference to political practices in our country that such provisions would not guarantee protection against hostile interpretations and twisting of the Constitution. Some respondents were against singling out unamendable provisions in the Constitution and argued that certain rules cannot be violated in a democracy, so there is no need to put them down in the Constitution. Therefore, those who opposed against introduction of unamendable provisions to the Constitution in fact, as shown by the analysis of their answers to the question in the open part of the Constitutional Survey, approved the postulate of perpetuity of certain provisions of the basic law, and assumed furthermore that the Constitution, though implicitly, contained such provisions. It should be noted, however, that amongst the respondents there have also been those who, while approving the idea of indirect incorporation of the so-called perpetual clauses into the Constitution, at the same time advocated that these clauses should be explicitly expressed in the text of the basic law. The strong support of Poland's constitutional law science for the concept of unamendable provisions validates the rationale of the thesis that the Constitution embodies certain principles that apply regardless of whether or not they have been explicitly expressed in the text of the Constitution and that the most important of those principles have a supra-constitutional lineage, while the duty to respect them rests with every legislator who aspires to partially amend or re-enact the Constitution.

4. Many respondents of the Constitutional Survey noted that permanence and stability of the Constitution are values that deserve to be highly protected, hence any change to the Constitution that violates these values should be considered an *ultima ratio*. All in all, the Constitution is not only a legislative instrument, but also the tradition and practice around the political system, as well as doctrinal and jurisprudential

interpretation. The respondents emphasized that adoption of the Constitution is not tantamount to its broad (actual) effect. It is only by backing the Constitution with statutory laws that concretise it, by expanding and clarifying its norms in the case-law and in writings of legal scholars, as well as by developing and stabilising its application in practice, that it becomes actually a functioning law. As one of the representatives of the Polish constitutional law science emphasized:

If we treat the Constitution and the role it should play seriously, we should endeavour to strengthen it and develop its provisions rather than adopt new constitutions every now and then.

In turn, another constitutional law expert said that:

building a constitutional order over a long term with the aim to strengthen the constitutional state of law and fundamental rights is a value in itself which must be protected and given priority whenever it conflicts other values [...]. Amendment of the Constitution is a last resort; constitutional legislation should only be resorted to when the potential legal defects cannot be remedied by other measures provided for in the legal system.

According to answers provided by other respondents, it appears that these views are almost universally shared amongst Polish constitutional law experts.

Respondents universally agreed that many of the imperfections of the Constitution could be successfully fine-tuned in the process of its application and that for this reason the amendment of the Constitution should be considered the last resort solution. At the same time, they acknowledged that legal practice so far has failed to tackle some of the shortcomings of the Constitution which therefore need to be rectified by amending the basic law. Enforcement of Constitutional accountability of persons performing public functions was regarded as the most dysfunctional amongst constitutional regulations. It has led to a practice of unaccountability of persons who have violated the Constitution and their legal unanswerability, also before the Tribunal of State. Respondents also pointed to the need to rethink and re-regulate the political position of the President, the relations between the President and the government as well

as the procedure for electing the Senate and the nature of this House. These issues were assessed as being the most problematic, requiring in-depth research and specific proposals for Constitutional amendment.

Many respondents justified the need to protect the permanence and stability of the Constitution by the recent incidents of its violation by politicians in power. It was emphasized that the procedure for amending the Constitution is generally well structured, however, the current practice of changing the state system through ordinary laws was recognized to pose a problem. It was argued that in the light of the practice of the ‘non-constitutional amendment of the Constitution,’ even the best procedures for Constitutional amendment would fail to guarantee security or stability. One of the respondents remarked that:

[...] as long as the society does not identify with the constitution, which is preceded by thorough educational and didactic effort, the basic law will be prone to endless “poking” and inducing constitution-related emotions, often motivated by short-term political considerations. It is not possible to guarantee the actual “constitutional rigidity” unless it is supported as a desired value by wider social circles.

For these reasons, amendment of the Constitution was not perceived as means of putting an end to the constitutional crisis. It was mentioned that its source originated not from the text of the Constitution, but from the pathological practice of its application involving its regular violations, acting against its provisions, interpreting these provisions in contradiction to constitutional axiology and its fundamental principles.

Most probably it was for these reasons that in the open part of the Constitutional Survey no constitutional law expert explicitly and unconditionally advocated the need for an immediate comprehensive amendment of the Constitution. In the closed part of the Constitutional Survey, 72% of the respondents expressed their opinion that a partial, limited scope of amendment of constitutional provisions would have been desirable; 6% of the respondents were against any amendments whatsoever. The majority of the respondents postulated that the existing constitutional solutions be adjusted, fine-tuned or sometimes also rendered in a greater detail. Although some postulates of introducing new institutions and solutions to the Constitution did appear, however, most of the respondents emphasized

that the proposed modifications are neither necessary nor urgent, and that the shortcomings of the Constitution could be for the most part eliminated by the right interpretation of its provisions and their proper application.

The analysis of the answers provided within the frame of the Constitutional Survey raises yet another, more general, question as to whether the Constitution can be evaluated with disregard to its violations. The weight of this problem in practice was particularly clear in the answers to the question whether the Constitution sufficiently counteracts the concentration of power.⁸ Before the crisis, a greater majority of the respondents would have probably given positive answers to this question because numerous mechanisms preventing the concentration of power are embedded in the Constitution. Given the present situation, i.e. when some of these mechanisms have been deactivated, the answer to this question has become more challenging. Therefore, some of the respondents stressed that the Constitution offers sufficient protection against the concentration of power 'provided that its provisions are correctly cognized and applied.' One of the respondents said that:

the applicable constitutional norms contain quite exemplary solutions for the separation of powers and their restraining [...]. Disruption of the constitutional principle of separation of powers that occurred recently [...] came as a result of intentional violations of the Constitution of the Republic of Poland, deliberate steps contrary to its norms [...]. It is not possible to imagine a corrective amendment to the Constitution of the Republic of Poland that could have prevented it under these circumstances.

5. One of the questions to be found in the Constitutional Survey made reference to the so-called constitutional moment.⁹ To prevent different understandings of this term amongst the respondents, the explanation of its

8 It was the question number 4 which was asked both in the closed as well as in the open part of the Constitutional Survey.

9 It was the question no. 11 in the closed part and the question no. 10 in the open part of the Constitutional Survey with the following wording: "Are we having a so-called constitutional moment right now, i.e. are there any actually existing, serious premises for the amendment of the Constitution that require a legislative reaction and are necessary for the achievement of certain social or state system goals?"

meaning for the purposes of the Constitutional Survey was incorporated into the text of the question. The constitutional moment was therefore defined as an 'actually existing, serious premise for the amendment of the Constitution that requires a legislative reaction and is necessary for the achievement of certain social or state system goals.' Therefore, the aim of the question was to seek an opinion whether there is a need to amend the Constitution (or to re-enact a new constitution) at the given point in time, under the given socio-political conditions then prevailing in Poland.

A question was asked in the closed part of the Constitutional Survey whether a constitutional moment in this sense existed at all, and therefore whether there were reasons for the amendment of the Constitution. In response to this question, 84% of respondents answered that there was no constitutional moment at that given time while 16% of respondents expressed the opposite view. In the open part of the Constitutional Survey, on the other hand, the respondents almost unanimously agreed that we were not having the constitutional moment then in Poland, because there were no actually existing, serious premises for the amendment of the Constitution that required a legislative reaction and were necessary for the achievement of certain social or state system goals. The opposite view was expressed by a single person who at the same time emphasized that 'some of the necessary changes can be introduced by modifying ordinary laws or revising the direction of the jurisprudence of the Constitutional Tribunal,' and furthermore commented that there was no majority required to successfully pass Constitutional amendments through the Parliament. Therefore, that person did not provide rationale for the thesis on the existence of the constitutional moment itself, but put forward this thesis and at the same time presented two counter-arguments. The remaining respondents, who in the closed part of the Constitutional Survey opted for the answer indicating the existence of the constitutional moment at the time, did not answer the question in the open part of the Constitutional Survey and thus did not provide substantiation for their views. It is therefore difficult to unequivocally judge what reasons, in their opinion, predetermined the existence of the constitutional moment.

Those respondents who in a greater detail addressed the problem of the constitutional moment in the open part of the Survey emphasized

that politicians of the present group of power did not have a majority in the Parliament needed to amend the Constitution.¹⁰ Hence, they were not legitimized to make radical systemic changes. It was also pointed out that violations of the Constitution by those in power that undermined its authority and changes to the state system by way of ordinary laws are not conducive to amending the basic law. As one respondent rightly pointed out:

It is not possible to develop effective mechanisms to safeguard the constitution when a major share of the political class directly declares that it rejects the Constitution, violates its provisions, invokes ill-conceived sovereignty of the nation and questions the fundamental principles underlying constitutions of modern democratic states. The Constitution can be a foundation for a political community, provided that members of this community are able to agree on a minimum set of values that underpin the basic law. Otherwise, we are in for constitutional nihilism. Its long-term consequences are the inability to solve basic social problems through law and disintegration of the political community. Under such conditions, debate on amendments to the Constitution becomes pointless.

It should also be noted that if persons who have not been duly legitimized by the Nation and who are being accused of violating the Constitution launch procedures aimed at amending the Constitution against the will of a large part of the society, it may raise concerns as to their actual intentions. As one of the respondents stated, it cannot be ruled out that the new Constitution is to serve the purpose of legalising the already committed violations of the current Constitution and will become an obstacle to enforcing constitutional answerability of those accused of committing a constitutional delict.

Respondents also justified the thesis that at that point in time we were not having the constitutional moment that would justify launching

10 According to Article 235 (4) of the Constitution, a bill to amend the Constitution shall be adopted by the Sejm by a majority of at least two-thirds 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 argument that politicians of the ruling group would not have a constitutional majority is therefore valid only if we assume that all, or almost all members of the parliamentary opposition will participate in the voting.

Constitutional amendment by the absence of a rationale for the amendment and absence of any specific amendment proposals. As one of the respondents stated:

Key constitutional solutions are capable of being at least correctly applied, but it is not possible – not even in the Constitution – to impose a legal and political culture, acting in good faith or with due diligence, or actually implementing the principles of correct legislation.

Respondents also mentioned that there is no general belief in the need to amend the Constitution at the moment, there are no conditions for a reliable and pragmatic constitutional debate, while strong divisions existing in the society preclude reaching an agreement around the idea of the political reform of the state. So far, no one has initiated a real public debate on the desirable directions of Constitutional amendment, while the discussion artificially animated by the Chancery of the President of the Republic of Poland, joined neither by scientific or political circles nor those representing civic society, cannot be regarded such a debate.¹¹

It should be noted that this unambiguous view on the absence of the constitutional moment that might justify the launch of the Constitution amendment procedure, as expressed by representatives of institutional science of constitutional law, coincided with numerous voices indicating the actual need for fine-tuning some of the deficiencies of this legal instrument. The postulates for changes were quite numerous, concerned various aspects and were, as already mentioned earlier, of different nature. This means that respondents knowingly distinguished the two issues, that is, on the one hand, the need to amend the Constitution, its scope and rationale and, on the other hand, the need for a right time for legislative work, adopting new legislation and its implementation. These are two different issues that should not be mixed. They are also based on different arguments and on the need to evaluate completely different premises.

¹¹ Notably, this initiative of the President failed because the Senate, in a vote held on 25 July 2018, did not agree for the so-called constitutional consultative referendum to be announced by the President.

6. In the opinion of respondents to the Constitutional Survey, absence of the constitutional moment that would justify the launch of the constitutional amendment procedure at the moment does not mean that the discussion on the need for such an amendment in the future should be abandoned. As one of those respondents emphasized, the aim is to:

develop the best solutions that would enjoy broad support not only from scientific and political circles, but also from the definite majority of citizens. However, concrete constitutional solutions cannot be developed and subsequently subjected to scientific, political and public evaluation in a hurry, within the timeframe of a single parliamentary term. Introducing major constitutional amendments requires time and thinking.

It should be added that a future amendment of the Constitution seems desirable also on account of the need to rectify the effects of many years of violations that have occurred recently. An example of these violations includes the Constitutional Tribunal, which is manned by persons who are not authorised to pass judgements and chaired by the person appointed President of the Constitutional Tribunal in violation of the law. However, the post-crisis reaction can only be launched when those responsible for violations of the Constitution would no longer have direct influence on the actions of state bodies empowered to enforce accountability for the consequences of such violations.

Summary

This text is an extended and modified version of the paper presented by the author during a scientific conference held on 16 June 2018 at the Jagiellonian University in Krakow. It presents the merits of the current Constitutional regulations as pointed out by respondents to the Constitutional Survey conducted in 2017 amongst representatives of the science of constitutional law in Poland. The analysis of the results of this Constitutional Survey leads to the conclusion that the Constitution is generally positively evaluated by those who have been researching it for a number of years. It was pointed out that its merits outweigh flaws and that it is not so much the content or axiology of the Constitution, but rather the practice of its application, that can be assessed in a negative way.

The Constitution is being used instrumentally at the moment and amended through ordinary laws. An analysis of the answers to the questions in the open part of the Constitutional Survey shows that constitutional law experts see a need to strengthen the guarantees of rigidity and stability of the Constitution and to increase the effectiveness of measures for protection of constitutional rights and freedoms. Representatives of the Polish science of constitutional law came to an almost unanimous conclusion that at present we are not having the so-called constitutional moment and inasmuch it is necessary to discuss the need to amend the Constitution and to propose different alternative solutions, yet there are no conditions for its amendment.

Keywords: Constitution, amendment of the Constitution, stability and rigidity of the Constitution, unamendable provisions, constitutional moment, rights and freedoms of the individual

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