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The comparative analysis of citizens rights in the 1976 and 1997 constitutions of Poland

The first Polish constitution was adopted on the 3rd of May 1791, being one of the first constitutions of the world and only four years younger than American constitution of 1787 and older than first French constitution (September 3rd, 1791). Then were constitution of Duchy of Warsaw (1806), Kingdom of Poland (1815) and Free City of Kraków (1815).

In the second Polish Republic (1918–1939) there were three constitutions: Little Constitution of 1919 (February 19th), March Constitution of 1921 (March 17th) and April Constitution of 1935 (April 23rd).

After the second world war Soviet Union installed in Poland communist government, backed by the Soviet army and secret police and the Polish communists introduced their own constitutions – quasi constitution called July Manifesto (PKWN Manifesto, July 22nd, 1944), Little Constitution of 1947 (February 19th) and Constitution of the People's Republic of Poland of 1952 (July 22nd).

Constitution of 1952 rejected separation (Montesquie's separation of three powers) of powers replacing it with the principle of unity of the political power. Legislative power was given to unicameral Sejm, executive power to government, in theory appointed by Sejm but in fact by the Political Bureau of the Central Committee of the Polish United Workers' Party (PZPR). The institution of president was substituted by collegial State Council.

Although Poland was in fact ruled by dictatorship of PZPR and more precisely by its Political Bureau, it was in 1976 when the articles were introduced into the constitution giving the PZPR "guiding position" and simultaneously introducing article about the friendship with Soviet Union.

During the years 1989–1992 the post of president and the higher house of parliament (senate) was restored and in effect of many amendments and novelisations most of the articles of the constitution of the Polish Peoples' Republic were abolished.

After the process of regaining sovereignty has started in 1989 the Little Constitution of 1992 (October 17th) amended the main articles of the communist Constitution and its articles constituted the legal basis of the state till 1997. It was constitutional provisional state that regulated relations between parliament, president and government and a part of articles concerned the local government. It also restored the principle of the separation of powers.

Its temporary aim was to reverse the communist basement of state converting it from the ideological state of socialism and constitutionally declared friendship with yet no existing Soviet Union to a democratic state ruled by law and implementing the principles of social justice.

The current Polish constitution was adopted on April the 2nd, 1997 by National Assembly (Zgromadzenie Narodowe) and approved on May 25th, 1997 by a national referendum. The constitution came in effect on October the 17th, 1997 which ended the state of temporariness and incoherence of the constitutional law replacing the temporary amendments of 1992.

We take into consideration constitution of 1952 with amendments to 1976, that means to the year in which erupted the workers protest in Ursus and Radom, that gave the beginning to the future social movement of Solidarity and which is representative for the "ripe" stage of "socialism building". In comparison we take text of the constitution of 1997 r.

According to the constitution of 1952/1976 Poland was a socialist state (art.1) (which was advancement from earlier status of Poland as a people's democracy) in which power belonged to the working people of the cities and villages (art 2). It also in 1976 gave the legal base and a special status for the Polish United Workers Party as a guiding political force of society in building socialism (art.3.1) and sanctioned the alliance with the United Peasant Party and Democratic Party (art.3.2). It also constitutionally sanctioned "strengthening of friendship and cooperation with the Soviet Union and other socialist states" (art. 6.2)

Constitution of 1997 declared Poland as "a democratic state ruled by law and implementing the principles of social justice" (art. 2). "Supreme power in the Republic of Poland" was "vested in the Nation" (art. 4) and the system of government was "based on the separation of and balance between the legislative, executive and judicial powers" (art. 10). Thus it ended with unity and unification of powers introduced in 1952.

Constitution "ensure freedom for the creation and functioning of political parties" (art. 11), "trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations" (art. 12). With the exception of the "political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred,

the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership". Such parties and organizations are prohibited (art.13).

Also "freedom of the press and other means of social communication" is ensured (art. 14). And specially under the protection and care of the Republic of Poland is placed "marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood" (art. 18) which is similar to the article of the 1976 constitution (art. 79: Marriage, motherhood and family).

In 1952/1976 constitution rights and obligations are included in the chapter 8 of the constitution titled: Fundamental rights and obligations of citizens (art. 67–93) – 27 articles (in this 90–93 with obligations).

In 1997 constitution its chapter 2 titled: The freedoms, rights and obligations of persons and citizens (art. 30–86) – 57 articles, in this 5 with obligations. Location of "the freedoms and rights" in the second chapter was to stress their importance in democratic state, also in comparison with the communist Constitution.

1976 constitution didn't separate the text of the chapter but the constitution of 1997 is divided into 6 parts: General principles art. 30–37 (8 articles), Personal freedoms and rights art. 38–56 (19 articles), Political freedoms and rights 57–63 (7 articles), Economic, social and cultural freedoms and rights art. 64–76 (13 articles), Means for the defence of freedoms and rights art. 77–81 (5 articles) and Obligations art. 82–86 (5 articles).

The most expanded are *Personal freedoms and rights* – 19 articles and *Economic, social and cultural freedoms and rights* – 13 articles, together 32 articles – more than a half of the chapter.

General principles speak about "the inherent and inalienable dignity of the person" as "a source of freedoms and rights" (art. 30), about equality of all persons before the law (Article 32), (similar as in 1976 – art. 81 – about equality of all citizens) and equality of men and women (Art. 33: "Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland. Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations"). They are typical and similar to the articles of communist constitution slightly differing in accents. Current constitution speaks about "men and women", 1976 constitution spoke about equal rights of woman with that of man (Art 78).

The bigger difference is in approach towards national or ethnic minorities, now they have "the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture" and "the right to establish educational and cultural institutions, institutions designed to protect religious identity" (art. 35).

Earlier constitution guaranteed equality of all persons before the law “regardless nationality race and faith” (art. 81) what is also hold in a current constitution (prohibition of “limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or property” – art. 233).

The most expanded subchapter *Personal freedoms and rights* in opening article no. 38 ensure in the name of The Republic of Poland “the legal protection of the life of every human being” what is rather unique in the world legislation and is an effect of the long debate of the abortionists and pro-life movements.

Next articles ensure “personal inviolability and security” (art. 41), “the freedom and privacy of communication” (art 49), “the inviolability of the home” (art 50), “freedom of conscience and religion” (art. 53) what corresponded with article of the communist constitution (art. 87 Personal inviolability, the inviolability of the home and secret of correspondence; art. 82 Freedom of conscience and religion).

In art. 54 there is a new thing obligation – to ensure “the freedom to express opinions, to acquire and to disseminate information” and the prohibition of “the preventive censorship of the means of social communication and the licensing of the press”, what was the common and institutionally organized practice of the communist regime.

Subchapter *Political freedoms and rights* ensure “the freedom of peaceful assembly and participation in such assemblies” (art. 57) and “the freedom of association” (art. 58). Those rights were formally granted in the communist constitution but impossible for realization without acceptance of the communist party – PZPR (art. 83 freedom of word, print, assembly and manifestations; art. 84 the freedom of association).

The only restriction in the 1997 constitution is for “associations whose purposes or activities are contrary to the Constitution or statutes” – they are prohibited. “The courts shall adjudicate whether to permit an association to register or to prohibit an association from such activities” (art. 58). In communist constitution the restriction was formulated in the other way: “creating of associations or taking part in associations whose purposes or activities are contrary to the political and social form of government or to the law system of Polish People’s Republic is prohibited” – Art. 84 par. 3). Every independent no communist movement was treated as breaking this article which gave the ground for accusation.

The Article 59 ensure “the freedom of association in trade unions, socio-occupational organizations of farmers, and in employers’ organizations”; the right of trade unions and employers and their organizations “to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other arrangements”; the trade unions’ “right to organize workers’ strike or other forms of protest”. In communist constitution article about trade unions (Art. 85) underlined its important social part and treated them as a school of citizenship activity. Of course with no right to strike or protest.

Next political rights were:

- “a right of access to the public service based on the principle of equality” (art. 60). It was directed against former practice of preferring members of PZPR for all posts.
- “the right to obtain information on the activities of organs of public authority as well as persons discharging public functions and on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury”. “Access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings” (Art. 61).
- “the right to participate in a referendum and the right to vote for the President... as well as representatives to the Sejm and Senate and organs of local government” – for persons who attained 18 years of age (art. 62).
- “the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person – with his consent – to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration” (art 63).

Apart from the elections rights the new was constitutionally guaranteed right to access to information and right to submit petitions. Earlier the citizen has only the constitutional right to lodge complaints and grievances (art. 86.2)

The most interesting and characteristic and individualized for Poland is subchapter *Economic, social and cultural freedoms and rights*. Here we have a broad spectrum of rights:

- “the right to **ownership**, other property rights and the right of succession and legal protection regarding ownership, other property rights and the right of succession” (art 64). Constitutional guarantees for property was a very important new approach toward it absent in collective thinking of the communist time disregarding and neglecting the right to ownership and property.
- “the freedom to choose and to pursue occupation and to choose place of work”. With restriction that “an obligation to work may be imposed only by statute” (art. 65.1–2). Earlier were limitation of place of live and place of work and also orders of work. Constitution of 1997 ensure also “a minimum level of remuneration for work” specified by statue (art. 65.4). In 1976 it was the right to work that means the right to employment with remuneration accordingly to its amount and quality – art. 68 par. 1). “The right to safe and hygienic conditions of work” (art. 66.1).

- “Public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention” (art. 65.5) In 1976 it was “the right to work ensured by: socialist economy system, planned development of the productive power, rational using of all production means, permanent initiating of the scientific-technological development in national economy and system of education and improving the professional qualifications. Proper realization of the right to work ensures socialist work legislation” (art. 68.2).
- “the right to statutorily specified days **free from work** as well as annual paid holidays; the maximum permissible hours of work shall be specified by statute” (art 66.2). In 1976 constitution it was “the right to rest and 8 hours day of work – (art. 69).
- “the right to **social security** whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age” (art 67.1); the right to social security for citizens who are “involuntarily without work and has no other means of support” (art 67.2).
- “the **right to have health protected**” ensured by public authorities by: “equal access to health care services, financed from public funds” with obligations to ensure “special health care to children, pregnant women, handicapped people and persons of advanced age”; “combat epidemic illnesses and prevent the negative health consequences of degradation of the environment” and “support the development of physical culture, particularly amongst children and young persons” (art 68.1–5). 1976 constitution similar guaranteed “the right to have health protected” (art. 70).
- providing “aid to disabled persons to ensure their subsistence, adaptation to work and social communication” (art. 69).
- “the **right to education**”. It contains compulsory education to 18 years of age; education in public schools without payment (but “payments for certain services provided by public institutions of higher education” may be allowed by statutes); the right of parents “to choose schools other than public for their children”; the right of citizens and institutions “to establish schools and institutions of higher education and educational development institution”; ensurance of “the autonomy of the institutions of higher education” (art 70.1–5). In communist constitution it was only the right to education without payment and compulsory grammar schools (art. 72) and all schools of every level were state-owned (with a very few exceptions).
- **assistance from public authorities for families**, “finding themselves in difficult material and social circumstances – particularly with many children or a single

parent” (art. 71.1) and the right to special assistance from public authorities for a mother, before and after birth (art 71.2). Similar care for motherhood and family was also in the 1976’ constitution (art. 79).

- “**protection of the rights of the child**. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense” (art. 72.1). The right of: “a child deprived of parental care ... to care and assistance provided by public authorities” (art.72.2). Taking into consideration, insofar as possible, priority to the views of the child, in the course of establishing the rights of a child by the organs of public authority and persons responsible for children (art. 72.3).

Constitution also provided the special office of the Commissioner for Children’s Rights” (art. 72.4), who is in charge for respecting the rights of the child.

- “**the freedom of artistic creation and scientific research** as well as dissemination of the fruits thereof; the freedom to teach and to enjoy the products of culture” (art 73). Similar was in 1976 – “the right to enjoy the products of culture and taking part in its creating” (art. 73).

The public authorities are obliged to:

- “pursue policies ensuring the **ecological security** of current and future generations” and “protection of the environment” what is their duty. They shall also “support the activities of citizens to protect and improve the quality of the environment”. The citizens “have the right to be informed of the quality of the environment and its protection” (art. 74.1–4). In 1976 citizens had “the right to enjoy the values of the environment” (art. 71).
- “pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen”; “Protection of the rights of tenants” (art. 75).
- to the obligations of the public authorities also belong protecting “consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices” (art 76).

Quite new in constitutional practice was introduction of subchapter *Means for the defence of freedoms and rights*. It gives:

- “the right to compensation for any harm done to him by any action of an organ of public authority contrary to law” (art. 77.1) and “the recourse to the courts in pursuit of claims alleging infringement of freedoms or rights” (art. 77.2).
- “the right to appeal against judgments and decisions made at first stage” (art. 78); “the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his

freedoms or rights or on his obligations specified in the Constitution” (art. 79); “the right to apply to the Commissioner for Citizens’ Rights for assistance in protection of his freedoms or rights infringed by organs of public authority” (art. 80). In 1976 citizens had the right to appeal to all state organs with complaints and grievances (art. 86.2).

Obligations of the citizens

- the duty of “Loyalty to the Republic of Poland” and “concern for the common good” (art. 82).
- the duty to “observe the law of the Republic of Poland” (art. 83). In 1976 it was “the duty to observe the Constitution and statutes, observe socialist discipline of work, respect the principles of community life, to fulfil honestly duties to Homeland” (art. 90).
- the duty “to comply with his responsibilities and public duties, including the payment of taxes” (art. 84).
- the duty “to defend the Homeland” but “the nature of military service shall be specified by statute” and “any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service” (art. 85). In 1976 it was “the duty to defend Homeland as a most sacred obligation of every citizen” and “military service as a honourable patriotic obligation” with no possibility of substitute service” (art. 92.1–2).
- “to care for the quality of the environment and to hold responsibility for causing its degradation” (art. 86).

Constitution of 1976 (art.67.3 and art. 90–93) counted also the other obligations: “to fulfil honestly duties to Homeland”; “protect and strengthen social property as the base of development and power of Homeland”; “vigilance toward the enemies of the nation and watchful guard state secret”. And what is completely omitted in a new constitution liability that “betrayal of Homeland: spying, weakening of the armed forces, passing over to the enemy – shall be punished with the whole strictness of law as the most grave crime” (art 93.2).

It can be easily seen that the democratic constitution has very extended catalogue of freedoms and rights in comparison to the communist constitution. It broadly describes freedoms and rights placing so many different fields in the text of the constitution, what is undoubtedly the heritage of the past, resulting from the anxieties about the position of the citizen towards the state. This anxiety and social articles of the constitution are also the source of the political and social conflicts as it is for example with the right to have health protected, ensured by public authorities through the equal access to health care services, financed from public funds; as it also is with the right to education in public schools without payment and with pursuing by public authorities “policies aiming at full, productive employment”.