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THE FUNDAMENTAL PRINCIPLES OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

Abstract

One of the most important tasks of contemporary democratic states, being simultaneously a real challenge for them, is guaranteeing a stable process of their dynamic and effective development, based on the democratic principles expressed in their constitutions jointly with their practical and effective implementation. Among others, one of the main states' tasks is also guaranteeing fundamental rights and freedoms to its citizens and people, as well as enabling them their proper exercising and strict observance. The hereby paper aims at conducting a detailed legal analysis of the catalogue of fundamental principles contained in the Constitution of the Republic of Poland of 1997, being presently in force, along with reflecting over their content and scope, as well as discussing their sources and axiological basis deriving from the output of Polish constitutional law doctrine, the doctrine of other developed democratic states and international standards.

Key words: *Fundamental Constitutional Principles; the Constitution of the Republic of Poland; Content, Scope and Interpretation of Basic Principles; Human Rights Guarantees, Effective Legal Instruments*

Introductory remarks

The substance of fundamental constitutional principles, as well as closely connected to them status of individuals and exact preserving and protection of their rights, particularly in the context of their relations with state authorities, is a considerably essential area of contemporary democratic states' functioning. All this acquire special significance in the states which have unsolidified traditions of statehood and democracy. For, in those of them where this substance has not been deeply rooted in their legal culture and a certain nation's mentality, huge efforts are still necessary in order to create effective mechanisms enabling individuals to have

certainty of a stable democratic development which would give them an unhampered opportunity to exercise their constitutionally provided rights and freedoms, as well as an efficient system of their protection and guarantees. Fundamental constitutional principles seem to probably be the most significant guarantees of the mentioned above substance.

The hereby paper aims at conducting an analysis of the issues directly connected with the fundamental principles guaranteed on the grounds of the presently binding Constitution of the Republic of Poland of 2 April 1997[1]. In particular, the subject of the paper covers an outline of the discussion over some aspects of the concept of a fundamental principle itself, further on it contains the presentation and overview of the catalogue of the fundamental constitutional principles provided by the Polish basic law, with paying most of attention to their formulation, as well as their scope and interpretation on the ground of the text of the Constitution, made in confrontation with the practice of their over two decade's functioning, as well as the output of the Constitutional Tribunal in this matter.

1. The Concept of the Fundamental Principles

In the constitutional law doctrine the concept of the fundamental constitutional principles remains disputable. It can be distinctly seen in the multiplicity and variety of terms used to name this phenomenon, just to name only some of them: 'basic principles', 'constitutional principles', 'general principles', 'political principles', etc.[2].

Therefore, one of the ways of comprehending the notion of the basic constitutional principles is to understand them as certain political decisions of a constitutional legislator's authority expressed in the form of the normative constructions, which determine the scope of human rights and freedoms, as well as establish the principles of organization and the range of the competences of the public authorities, i.e. the system and construction of the supreme bodies, government administration and local self-government.

As a consequence of the abovementioned, the constitutional law theory concentrates its reflections on the following problematics here:

1) Do "fundamental", i.e. supreme principles, as well as any other, „not supreme" ones exist?

[1] The Official Law Gazette 'Dziennik Ustaw' 1997, No 78, item 483 with amendments.

[2] Competently this problem is discussed by Bogumił Szmulik and Jarosław Szymanek in: *Konstytucja Rzeczypospolitej Polskiej*, introduction by Szmulik, B.; Szymanek, J., Wydawnictwo Sejmowe, Warszawa, 2017, p. 24 & the subs.; see also Garlicki, L., *Polskie prawo konstytucyjne. Zarys wykładu*, Liber, Warszawa, 1998, p. 51; Grzybowski, M. (ed.), *Prawo konstytucyjne*, Temida 2, Białystok, 2009, p. 72.

2) Are the constitutional principles only those which are *exspressis verbis* formulated in the constitution itself, or can they be established by way of its provisions' interpretation, or can they be elaborated by the doctrine?
3) Can the constitutional principles be changed?

It is worth underlining, that different responses are made to these questions and their content depends on the taken approach, which also varies. Some contemporary basic laws establish the changelessness of certain fundamental constitutional principles (e.g. the French constitutions provided that the principle of the republican form of government could not be changed). While a special peculiarity of the Nordic states, for instance, is that some principles have been existed and used in practice for many centuries, though they have never been explicitly expressed in a formal way and sanctioned by the texts of the valid basic laws (e.g. the principle of sovereignty of the people or the principles of the representative form of exercising power in the constitution of Denmark)[3].

The fundamental principles of government and politics are not always *expressis verbis* determined in the texts of contemporary basic laws being in force. Therefore, interpreting all the fundamental principles from their texts still remains a difficulty in itself, because it is followed from the lack of clear and precise identification and definition of the concept of fundamental (basic) constitutional principles (of government and politics), which usage is rather conventional[4].

[3] More extendedly on the constitutional principles of the Nordic states see: Grzybowski, M., *Systemy konstytucyjne państw skandynawskich*, Wydawnictwo Sejmowe, Warszawa, 2010, p. 11. A deeper research on the constitutional principles of Finland is made by Serzhanova, V., *Naczelne zasady ustroju politycznego w Konstytucji Republiki Finlandii* in: Skotnicki, K.; Składowski, K.; Michalak, A. (ed.), *Zagadnienia prawa konstytucyjnego. Polskie i zagraniczne rozwiązania ustrojowe. Księga jubileuszowa dedykowana Profesorowi Dariuszowi Góreckiemu w siedemdziesiątą rocznicę urodzin*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, 2016, pp. 363-377. See also: *eadem*, *Suomen perustuslaki. Ustawa zasadnicza Finlandii*, Wydawnictwo Uniwersytetu Rzeszowskiego, Rzeszów, 2017, pp. 37-45.

[4] Such an attitude in the Polish constitutional law literature is presented by the majority of the researchers concentrating on this problematics. For instance, this is underlined by Piotr Tuleja, who states, that the concept of the constitutional principles cannot be defined in a uniform way. See Tuleja, P., *Zasady konstytucyjne* in: Sarnecki, P. (ed.), *Konstytucjonalizacja zasad i instytucji ustrojowych*, Wydawnictwo Sejmowe, Warszawa 1997, p. 24. This viewpoint is also shared by Rett R. Ludwikowski, who makes a discerning analysis of different concepts of constitutional principles, as well as suggests his own definition of the fundamental ones. See: Ludwikowski, R. R., *Prawo konstytucyjne porównawcze*, TNOiK, Toruń, 2000, p. 167 & subs. An extremely essential in the doctrine and much newer publication dedicated to the constitutional principles is a collective work entitled *Zasady naczelne Konstytucji RP z 2 kwietnia 1997 roku*, being the effect of the debates during 52 All-Polish Session of the Constitutional Law Chairs in Miedzyzdroje (27-29 May 2010), Bałaban, A.; Mijał, P. (ed.), Wydawnictwo Uniwersytetu Szczecińskiego, Szczecin, 2011, *passim*. The works contained in

However, non-depending on the differences in defining, there is a certain consensus as to the fact, that basic laws, aside of more detailed norms, also contain fundamental and general formulas, which are the basic principles referring to the rights and freedoms of the citizens, the state's organization and functioning, the structure of the legal system, etc. These principles may be explicitly formulated in basic laws, e.g. in separate chapters specially dedicated to them (usually in the first ones, for they are the fundamental basis of the state's organization and functioning), or they may also be construed by way of interpretation of many other constitutional provisions[5]. Besides, locating the fundamental principles in a separate chapter does not unambiguously close their catalogue and does not exclude their interpretation from the other constitutional provisions. This feature is characteristic for the most of contemporary basic laws, including the Polish one, too. Therefore, there is no any uniform viewpoint as to the exact, closed and enumerative catalogue of the fundamental principles on the ground of the Polish constitution among their researchers in the constitutional law doctrine. There are different catalogues because of this, created by various constitutionalists.

2. The Basic Catalogue of the Fundamental Principles in the Constitution of the Republic of Poland

On the grounds of the Constitution being in force in Poland it is possible to establish the following main ones, which have been expressed in its chapter I entitled *The Republic*, and referring to which there is a more consensus among the most of Polish constitutional lawyers:

1) the principle of the republican form of government;
2) the principle of the democratic legal state;
3) the principle of the unitary form of state;
4) the principle of the supreme power (sovereignty) of the nation/people;
5) the principle of the separation of powers;
6) the principle of a civil society;
7) the principle of decentralization and self-government;

it, which may be particularly useful for the reflections over the constitutional principles, are the following: Zieliński, M., *Zasady i wartości konstytucyjne*, pp. 21-40; Bałaban, A., *Katalog zasad naczelnych Konstytucji w polskich podręcznikach prawa konstytucyjnego*, p. 41& subs., as well as others. One of the newest works, worth referring to, is written by Pułło, A., *Zasady ustroju politycznego państwa. Zarys wykładu*, Gdańska Szkoła Wyższa, Gdańsk 2014, *passim*.

[5] Ludwikowski, *op. cit.,* note 4, p. 168.

8) the principle of autonomy, independence and collaboration between the state, churches and other confession unions[6].

The principle of the republican form of state has been expressed in Art. 1 (chapter I) of the constitution, which states: 'The Republic of Poland is a common good of all its citizens'. In fact, the title of the chapter *The Republic* itself prejudges on the republican form of government. The essence of the republic, opposite to the monarchy, consists in the fact that the head of state is elected and exercises his function during a certain term of office. This seems to be the first and the most significant element of comprehending the principle discussed here.

The Republic is also a part of the official Polish state's name. But the procedure of appointing the office of the head of state does not explain the whole meaning of this form of government. In fact, the essence of a republicanism is being such a form of the state's organization, in which its citizens have been guaranteed the influence on public matters. This seems to be the meaning of Art. 1, stating that Poland is a common good of all its citizens, which is their very important and considerable value, indeed.

The architype of the republic was the Roman Republic – *Res publica Romana*. It existed even after the factual fall of the republican system in 27 B.C., when the Roman Empire was established, till almost the end of the third century A.D. It is also worth mentioning, that the division of the states' forms into republics and monarchies was solidified in the Renaissance Era by Niccolò Machiavelli (1469–1527), who wrote in his *Il Principe (The Prince)*: '*Tutti gli Stati, tutti i dominii che hanno avuto, e hanno imperio sopra gli uomini, sono stati e sono o Repubbliche o Principati* (All states, all powers, that have held and hold rule over men have been and are either republics or principalities'[7].

The principle of the democratic legal state on the ground of the Polish constitution[8] basically comprises two elements: a legal state and a democratic state.

[6]However, one ought to remember that generally the catalogue of the fundamental constitutional principles is seen very differently by other authors. Compare: Szmulik et Szymanek, *op. cit*., note 2, pp. 26 & the subs.; Garlicki, *op. cit.*, note 2, pp. 52-82; Grzybowski, *op. cit*., note 2, p. 73.

[7] Machiavelli N., *Il Principe,* Italia 1814.

[8] The representatives of the contemporary constitutional law doctrine, history, as well as the theory and philosophy of law have written a lot and very competently about the origin and essence of the conception of a legal state. Among the most important works of the Polish constitutional law output there ought to be mentioned the following: Pułło, *op. cit.*, note 4, p. 94 & the subs.; Uziębło, P., *Państwo prawa* in: Zajadło J. (ed.), *Leksykon współczesnej teorii i filozofii prawa*, Wydawnictwo C.H. Beck, Warszawa, 2007, pp. 221-228; Zakrzewska, J., *Państwo prawa a nowa konstytucja* in: Skąpska, G. (ed.), *Prawo w zmieniającym się społeczeństwie*, Wydawnictwo Adam Marszałek, Toruń, 2000, pp. 325-334; Zoll, A., *Demokratyczne państwo prawne*, Civitas, No 1, 1997; Dziadzio, A., *Koncepcja państwa prawa*

Therefore, this principle is mainly derived from the concept of a legal state (an English notion of 'the rule of law' or a German concept of *Rechtsstaat*).

The initial objective of a legal state was not only restricting the state power, but also binding the state authorities with legal norms. Observing law was to be guaranteed by the differentiation of supervisory institutions and establishing various forms of responsibility of the people exercising state functions in order to provide their effectiveness. With the help of created laws a legal state determined, as precise as possible, the organization, limits and forms of its activities, as well as the scope and ways of interfering into the area of an individual's freedom. It was laws that were to rule in the state, not people.

The first assumptions of the concept of a legal state were created and expressed by the political writers of the Enlightenment Era, with the essential contribution of Jean Jacque Rousseau (1712–1778) into it. Moreover, this idea was also determined in the first written constitutions (the USA of 1787, the State of Massachusetts' of 1790, the first two French ones of 1791 and 1793). Its sense, in its simplest apprehension, consisted in the idea that state authorities were allowed to do only what they were permitted by the law, while citizens could do all that the law did not prohibit them to.

Besides, a more detailed analysis of this concept allows to see its following elements: constitutionalism (organizing the state on the basis of the constitution); separation of powers (in order to stop exceeding the power by rulers and ensuring individual freedoms); independency of judiciary; recognizing a statute to be a basic source of law; subordination of administration to law.

The concept of a democratic legal state seems to be a more extended one in comparison to the idea of a legal state. It contains an additional, very significant element, i.e. the citizens' influence on creating law, comprehended as their impact on constructing a catalogue of rights and freedoms, confronting them with the international standards and submitting them to the control of supranational and international authorities in the field of their observance[9].

w XIX w. Idea i rzeczywistość, Czasopismo Prawno-Historyczne, v. 1, 2005, pp. 177-201; Kowalski, J. (ed.), *Państwo prawa. Demokratyczne państwo prawne. Antologia*, Wyższa Szkoła Handlu i Prawa w Warszawie, Warszawa, 2008, *passim*; Rot, H. (ed.), *Demokratyczne państwo prawne (aksjologia, struktura, funkcje). Studia i szkice*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław, 1994, *passim*; Lipowicz, I., *O mądre prawo i wrażliwe państwo*, Biuro Rzecznika Praw Obywatelskich, Warszawa, 2013, *passim*. See also: Szmulik et Szymanek, *op. cit*., note 2, p. 28; Garlicki, *op. cit*., note 2, pp. 58-62; Szmulik, B. (ed.), *Prawo konstytucyjne*, Wydawnictwo C.H. Beck, Warszawa, 2016, p. 70.

[9] See: Banaszak B., *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*, 3rd ed., Wolters Kluwer, Warszawa, 2012, pp. 201-203; Grzybowski, *op. cit*., note 2, pp. 75-76.

The research on the contemporary understanding of the essence and interpretation of the principle of the democratic legal state on the grounds on the Polish basic law, also based on its practical functioning after two decades of the Constitution being in force, as well as following from the activity of the Constitutional Tribunal in this field, let us perceive its following elements and basic characteristic features: the principle of the separation of powers; the existence of a complete legal system (sources of law); the supremacy of the constitution over other legal acts, as well as the primacy of laws over other subordinate acts in the hierarchy of the system of legal sources; the existence of the developed constitutional catalogue of rights and freedoms created on the basis of the international standards and a relevant system of their institutional and legal guarantees; the interference of the state into the sphere of freedoms and rights exclusively on the basis of laws and to the degree necessary to preserve the democratic standards and not endangering their excessive, unproportioned and unjustified restriction; the existence of the mechanisms of controlling the constitutionality and legality of normative acts[10]; the principle of sovereignty; ensuring the society its participation in taking state decisions, including creating laws and exercising justice; electoral procedures based on the democratic principles of freedom, secrecy and universality; protecting of the rights justly acquired; a judicial control of the public power activities, including the executive authorities; a compensatory liability of the state[11], being an institutional guarantee of the rule of law, as well as the civil liability of its officials and the criminal liability of the supreme state functionaries[12]; the respecting of the principle of a so-called internal morality of law and following from it rules of good legislation, which consist in its publicity, non-contradiction, wholeness, prohibition of retroactivity, clear rules determining their principles of validity and uniform application, a relative period of time passing between a normative act's announcement and its enforcing (*vacatio legis*), the prohibition of excessive

[10] See: Kelsen, H., *Istota i rozwój sądownictwa konstytucyjnego*, trans. Banaszkiewicz, B., Trybunał Konstytucyjny – Wydawnictwa, Warszawa 2009, p. 38 & the subs.; Rousseau, D., *Sądownictwo konstytucyjne w Europie*, Wydawnictwo Sejmowe, Warszawa, 1999, p. 20; Jellinek, G., *Ein Verfassungsgerichtshof für Österreich*, Hölder, Wien, 1885, *passim*; *Kelsen, H., Vom Wesen und Wert der Demokratie, Tübingen: Mohr 1920*, 2nd extended edition 1929, reprint: Scientia, Aalen, 1981; Urbinati, N., Accetti, C. I. (ed.), *The Essence and Value of Democracy*, transl. Graf, B., Rowman & Littlefield Publishers, 2013, *passim*.

[11] Interesting digressions on the compensatory liability of the state, worth paying attention to, can be found in: Dudek, D., *Konstytucja a odpowiedzialność* in: Gdulewicz, E.; Zięba-Załucka, H. (ed.), *Dziesięć lat Konstytucji Rzeczypospolitej Polskiej*, Wydawnictwo Uniwersytetu Rzeszowskiego, Rzeszów 2007, p. 48.

[12] See: Banaszak, *op. cit.* note 9, pp. 286-289.

interference (the principle of proportionality); the principle of independent courts and autonomous judges[13].

The principle of the unitary form of state has been expressed in Art. 3 of the Constitution: 'The Republic of Poland is a unitary state'. This means that in Poland particular territorial divisional units do not possess any political independence. There exists one uniform system of state authorities and one legal system, which is based on the Constitution[14].

The principle of the supreme power (sovereignty) of the people (nation) has been established by Art. 4 of the Constitution: 'The supreme power in the Republic of Poland belongs to the People'. This prejudges that the object of the supreme power, i.e. the sovereign, is a collective one – the nation. It also implicates the idea of self- and whole-ruling, which means that the sovereign, being the object of the supreme power, does not depend on any other external or internal power and its power spreads around the whole state territory, without any exceptions[15].

Moreover, the principle of sovereignty expressed in the Constitution implicates that the law has to express the will of the whole people of the state and that this will is expressed in direct (e.g. referenda) or indirect forms (e.g. representative, elected for the exact terms of offices authorities)[16].

The modern doctrinal concept of sovereignty was derived in 16th century by Jean Bodin (1530-1596), who was the supporter of the concept of a strong centralized state, which he expressed in his work *Les Six livres de la République (The Six Books of the Republic)*. Later it was also developed by Thomas Hobbes (1588–1679) in his famous work entitled *Leviathan*. However, the idea of sovereignty is mostly strongly connected with J. J. Rousseau, who, contrary to his predecessors, instead of the concept of the sovereignty of a monarch, made the nation the object of the supreme power.

The modern formulation of the principle of sovereignty, including also the Polish basic law context, is strongly influenced by the fact of the states' membership and active participation in international and supranational organizations, unifying them in such structures as the European Union, for instance. Therefore, the main idea and scope of the contemporary apprehension of sovereignty consists in the fact, that the states, which decide to join such structures, freely and voluntarily resign from a

[13] See also: Pieniążek, A., *Zasada demokratycznego państwa prawnego* in: Szmulik, *op. cit.*, note 8, pp. 71-71; Grzybowski, *op. cit*., note 2, pp. 74-75; Garlicki, *op.. cit.*, note 2, pp. 58-62.

[14] This principle does not appear in the works of the most of Polish constitutionalists, but according to my personal conviction it is difficult not to be noticed and perceived as one of the most significant ones, as far as the state's territorial structure is concerned.

[15] Compare to: Szmulik et Szymanek, *op. cit*., note 2, pp. 28-29; Garlicki, *op.. cit.*, note 2, pp. 52-56; Banaszak, *op. cit.* note 9, pp. 203-206; Szmulik, *op. cit.*, note 8, p. 68; Grzybowski, *op. cit*., note 2, p. 74.

[16] See: Banaszak, *op. cit.* note 9, pp. 208-236.

certain degree of their sovereignty for the sake of common good and the main values of functioning within a community for the purpose of their good, by way of transferring a part of their sovereign competences onto the supranational structures and their common authorities. Thus, they definitely restrict the scope of their own sovereignty.

The principle of the separation of powers has been expressed in Art. 10 point 1 of the Constitution: 'The political system of the Republic of Poland is based on the division and balance of the legislative, executive and judicial powers'[17].

The separation of powers' concept was mentioned for the first time by 17th century English political writers in their pamphlets. While in its contemporary meaning it was later elaborated by John Locke (1632–1704) in his famous work *Two Treatises of Government*. However, a much more commonly spread and modified version of this concept was created by Charles Montesquieu (1689–1755) in his work *De l'esprit des lois* (*The Spirit of the Laws*). It found its practical use in the first written constitutions (the USA of 1787, the Polish of 3 May 1791 and the French of 3 September 1791).

It is worth underlining here, that the separation of powers' principle does not only assume the simple division of the whole activities of the authorities exercising the state power into three spheres, i.e. legislative, executive and judiciary, which was already known in the ancient Roman times. The main idea of the contemporary apprehension of this concept assumes their equality and parallelism, as well as the creation of the so-called check-and-balances mechanisms. Therefore, we may suppose here the existence of the following principle's elements: creating the relative authorities competent to exercise each of the three spheres of the state's activity (legislative, executive and judicial) on the basis of law; entrusting them, on the basis of law, with the relative scope of competences; equipping them, on the basis of law, with the relevant instruments to be able to perform their tasks; assuring the authorities the instruments of check-and-balances in order to preserve their equality and equivalence.

However, the modern structures of public power authorities, including the state bodies, remain much more complicated and elude from the classical seizure of this concept, for there appear a rather large number of the supreme states authorities, which cannot be regarded to belong to either of the mentioned above areas. For instance, such authorities as National Supervisory Chambers or Ombudsmen belong to such a group of bodies. On the grounds of the Polish Constitution they are accounted to 'the authorities of control and legal protection', to which a separate chapter of the

[17] Compare to: *ibid*, pp. 279-286; Szmulik et Szymanek, *op. cit.*, note 2, pp. 30-31; see also: Garlicki, *op. cit.*, note 2, pp. 70-79; Szmulik, *op. cit.*, note 8, pp. 73-75; Grzybowski, *op. cit.*, note 2, p. 74.

basic law is devoted. This can also lead to a conclusion, that the separation of powers' principle decides only on a basic organizational structure of the state.

Nevertheless, the separation of powers' concept still preserves its great significance among the fundamental principles of contemporary constitutions and the states authorities' structures, including Poland. It has made one of the most essential and considerable guarantees of a liberal state system since it was applied in the first constitutional acts and political practice for over 200 years.

The principle of the civil society has been expressed in Art. 11 and 12 of the Constitution[18]. Art. 11 guarantees the freedom of creating political parties and their activity, which are 'free to associate the citizens of the Republic of Poland based on the principles of voluntariness and equality for the purpose of influencing the forming of the state policy by way of using democratic methods'. While Art. 12 guarantees the freedom of creating trade unions, associations, civil movements, foundations and other forms of citizens' social activeness, as well as their activity on the basis of law for the purpose of realizing the citizens' interests and expressing their opinions. Both provisions have intentionally been located in the chapter devoted to the basic principles of the state's organization, instead of the chapter concerning the rights and freedoms, where the freedom of association, guaranteed to everyone, has been separately included, because they underline a possibility of the citizens' active participation in the shaping the state's policy directions. For, such an activity makes the citizens subjects empowered to be co-liable for the state's lots. The content of Art. 11 ought not to be comprehended in the way that only political parties have been granted the monopoly in the field of 'forming the state's policy', for by this way only the main purposes and objectives of creating political parties have been pointed out.

The principle of decentralization and self-government has been determined in Art. 15 and 16[19]. Art. 15 point 1 states: 'The territorial system of the Republic of Poland ensures the decentralization of public power'. While Art. 16 point 1 states: 'All the inhabitants of the basic territorial division units create a self-government community by the virtue of law'.

This principle means, that the constitutional legislator has transferred a large number of competences of the supreme state authorities, particularly the government, to the local governmental and self-government administration organs. By this way the so-called horizontal structure of the power division is created.

Contemporary processes of the European integration are in favour of the principle of decentralization and expanding self-government. The regional policy conducted by the European Union, which assumes the atrophy of traditional state borders, accelerates creating trans-border regions to organize the life of local

[18] A bit differently it is seen by Szmulik et Szymanek, *op. cit.*, note 2, pp. 31-32; compare: Garlicki, *op. cit.*, note 2, pp. 66-70; Grzybowski, *op. cit.*, note 2, pp. 78-79.

[19] Compare: Grzybowski, *op. cit.*, note 2, pp. 81-82.

communities on the basis of more and more extended tasks, ceded on them by the central authorities.

The principle of autonomy, independence and collaboration between the state, churches and other confession unions has been determined by Art. 25 of the Constitution[20]. In its point 1, it states: 'Churches and other religious communities are equal', while point 3 provides: 'Relations between the State and the Churches and other religious communities are formed on the principles of the respect for autonomy and mutual independence of each of them in their own scope, as well as collaboration for the benefit of a man and common good'.

European history and tradition have formed two opposite systems of relations between the state and the church: their link and their division. The first kind is older and dates back to the caesaropapism times shaped during the rule of Theodosius, who in 380 introduced a state religion in the Eastern Roman Empire. The Emperor was the superior of the Church and co-decided on its doctrine and ecclesiastical law.

The system of supremacy of the state over the church, which was introduced in Europe after the Peace of Augsburg in 1555, seems to be very close to the abovementioned type.

However, an idea of the division of the church from the state appeared for the first time during the Enlightment Era. It was also applied in the first amendment of the Constitution of the United States, while in Europe it was introduced in France in 1794–1795.

Contemporarily, the principle of the division of the State and Church, as it is established, is characterized by the following most essential elements: the lack of a state religion, the equality of churches and religious communities, which activities are not financed by the state; the choice or rejection of the religion is considered to be a private matter of each citizen; everyone has a right to freely practice his religion in private and in public, individually and collectively; churches and religious communities possess full autonomy and freedom in organising their internal existence, determining their religious doctrine, appointing for the positions in their organizational structures, propagating and teaching faith and moral principles; churches and religious communities do not undertake any direct political activities and do not participate in exercising the state power; the freedom of religion may be used in a way which does not endanger the freedoms of other people or public security (the so-called public security clause); no one can be discriminated because of his convictions on religious matters, nor can he/she be enforced to publicise them (the right to silence)[21].

An initial hostile attitude of the Catholic Church to the division of the church from the state, expressed by Pius IX in his *Syllabus* published in 1864, gradually

[20] *Ibid*, pp. 84-87.
[21] Winczorek, P., *Wstęp do nauki o państwie*, 2 ed., Liber, Warszawa, 1997, p. 197.

changed. And although the documents of the modern church do not use the term 'division' and rather prefer to say about a mutual independence, autonomy and collaboration of the church and the state, the fact is still about the same notion, indeed, on a condition that the this kind of division does not become a hostile one, and remains friendly[22].

Presently the relations between the Catholic Church with the Polish state are regulated by the Concordat of 1993, ratified on 8 January 1998, while other religious communities function on the basis of the acts of law. The present 'friendly division', or as it is also called sometimes 'coordinated separation', grants the churches a regulatory status.

Conclusions

Fundamental constitutional principles contained in contemporary basic laws of democratic states remain perhaps the most significant guarantee of a democratic state's development, as well as the legal instrument of assuring the status of individuals and effective preserving and protection of their rights.

In the constitutional law doctrine the content of the concept of the fundamental constitutional principles remains disputable, which is seen both in the multiplicity and variety of the used terminology in this area. Despite all the controversies and arguments, there is a rather unified approach to the fact, that the fundamental constitutional principles can be comprehended as certain political decisions of a constitutional legislator's authority expressed in the form of the normative constructions, which determine the scope of human rights and freedoms, as well as establish the principles of organization and the range of the competences of all the public authorities.

The basic catalogue of the fundamental constitutional principles, which can be interpreted from the basic law provisions on the ground of the Constitution of the Republic of Poland, includes the ones being the most significant for any democratic modern state, i.e.: the principle of the republican form of government, the principle of the democratic legal state, the principle of the unitary form of state, the principle of the supreme power (sovereignty)of the nation/people, the principle of the separation of powers, the principle of a civil society, the principle of decentralization and self-government and the principle of autonomy, independence and collaboration between the state, churches and other confession unions. Their content, scope and way of comprehension and interpretation are determined to a larger extent by the constitutional law doctrine, both Polish and European, their practical application and

[22] *Ibid*, p. 198.

functioning during the period of over 20 years of the basic law's validity and the interpreting activity of the Constitutional Tribunal[23].

In the states, where the traditions of statehood and democracy have not been solidified for centuries and the substance of democratic constitutional guarantees has not been deeply rooted in the legal culture and nation's mentality, a more thorough effort is necessary in order to create and fix such mechanisms, which would effectively enable individuals to have certainty of their stable democratic development within their state and which would give them an unhampered opportunity to exercise their constitutionally guaranteed rights and freedoms, as well as enjoy an efficient system of their protection. And therefore, the fundamental constitutional principles seem to probably be the most significant guarantees of this.

The problem of the level of the individual rights' observance undoubtedly depends upon whether a state is able to create an effective system of their protection or not. Not less important is here, indeed, the major basis, from which this substance is derived, i.e. a catalogue of fundamental constitutional principles of the state's government and politics, being among the most essential constitutional guarantees. They remain the main and supreme source of human rights and freedoms, as well as a standard attribute of a democratic legal state. Contrary to the states with long and stable traditions of statehood and democracy, this problem seems to be especially essential and vivid in case of those states which still remain on the stage of solidifying

[23] See more extendedly about various aspects of the Constitutional Tribunal's activity in: Bosek, L.; Wild, M., *Kontrola konstytucyjności prawa*, C.H. Beck, Warszawa, 2014, *passim*; Kustra, A., *Kontrola konstytucyjności całej ustawy*, Przegląd Sejmowy, No 2, 2012, pp. 13-33; Banaszak, *op. cit*., note 9, p. 444 & the subs.; Mojski, W., *Kilka uwag o przedmiocie i funkcjach kontroli konstytucyjności prawa w Polsce*, Przegląd Prawa Konstytucyjnego, No 2–3, 2010, p. 281 i & the subs.; Ziemianin, B., *Pozycja prawna Trybunału Konstytucyjnego* in: Ciapała J., Mijał P. (ed.), *Wokół wybranych problemów konstytucjonalizmu*, Wydawnictwo Sejmowe, Warszawa, 2017, pp. 357-363; Płowiec, W., *Przepis prawny i norma prawna jako przedmiot kontroli Trybunału Konstytucyjnego*, Państwo i Prawo, No 1, 2017, pp. 36-53; Małajny, R.M., *Trybunał Konstytucyjny jako strażnik Konstytucji*, Państwo i Prawo, No 10, 2016, pp. 5-22; *idem*, *Legitymacja sądownictwa konstytucyjnego*, Państwo i Prawo, No 10, 2015, pp. 5-21; Garlicki, L., *Niekonstytucyjność: formy, skutki, procedury*, Państwo i Prawo, No 9, 2016, pp. 3-20; Szmulik, B., *Sądownictwo konstytucyjne – ochrona konstytucyjności prawa w Polsce*, Wydawnictwo UMCS, Lublin, 2001, *passim*; Czeszejko-Sochacki, Z., *Sądownictwo konstytucyjne. (Tradycja a współczesność)*, Państwo i Prawo, No 6, 2001, pp. 17-31; *idem*, *Sądownictwo konstytucyjne w Polsce na tle porównawczym*, Biuro Trybunału Konstytucyjnego, Warszawa, 2003, *passim*; Trzciński, J. (ed.), *Trybunał Konstytucyjny*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław, 1987, *passim*; Jamróz, L., *The Constitutional Tribunal in Poland in the Context of Constitutional Judiciary*, Temida 2, Białystok, 2015, *passim*; *Zagadnienia sądownictwa konstytucyjnego. O istocie państwa w 90 rocznicę ustanowienia Konstytucji marcowej*, Trybunał Konstytucyjny – Wydawnictwa, Warszawa, 2014, *passim*.

their statehood foundations, as well as seeking, striving for and testing their ways of democratic development, being rather new for them hitherto.

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