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## **RIGHTS AND FREEDOMS IN THE CONSTITUTION OF THE REPUBLIC OF POLAND\*\***

**Abstract:** *Guaranteeing the fundamental rights and freedoms to citizens, as well as enabling them their proper exercising and strict observance, are one of the most important tasks of contemporary democratic states and simultaneously a real challenge. The level of the individual rights' observance undoubtedly depends upon whether a state is able to create an effective system of their protection. Not less important is indeed the catalogue of fundamental rights and freedoms contained in the Constitution which, in consequence, along with the constitutional guarantees, remains one of the most essential attributes of their protection. Given that the basic law is treated as their main and supreme source, violating such rights is considered to be the breach of the constitutional provisions. 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 their statehood foundations as well as seeking, striving for and testing their ways of democratic development, being rather new for them hitherto. The paper aims to provide a detailed legal analysis of the catalogue of rights, freedoms and duties envisaged in the Constitution of the Republic of Poland of 1997, presently in force, as well as to reflect on their sources and axiological basis deriving from the international standards. The paper first discusses the key concepts in the Polish constitutional law doctrine: a right, a freedom, a duty, and their*

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*constitutional guarantees. Further on, it focuses on the analysis of particular rights, freedoms and duties catalogued in the Polish basic law, as well as their scope and interpretation. In the end, the paper discusses the problems related to constitutional guarantees of the fundamental rights and freedoms.*

**Keywords:** *fundamental rights and freedoms, the Constitution of the Republic of Poland, content and interpretation of basic rights, observance of human rights, effective legal instruments.*

## 1. Introduction

The substance of the status of individuals, including the strict observance of their rights, especially in the context of their relations with the state authorities, is an extremely essential area of contemporary democratic states' functioning (Banaszak, 1995). It gains even more importance in the states with unsolidified statehood and democratic traditions, where this substance has not been deeply rooted in the legal culture and nation's mentality. In such states, huge efforts are still necessary to create effective mechanisms ensuring the unhindered exercise of constitutionally provided legal rights and freedoms, and to establish an effective system of their guarantees and protection.

The Polish constitutional legislator has treated the regulation of the fundamental rights and freedoms in its basic law rather extensively and in great detail. This approach seems to be a result of the binding liberal doctrine, determining the supreme status of an individual in relation to the state. Moreover, it is worth noting that the Polish Constitution was created in the period of the transformation of the state's political system and in the eve of joining the EU. Hence, constructing a catalogue of citizens' fundamental human rights and freedoms contained in the basic law as well as the system of their constitutional guarantees was held under a strong influence of the standards ensuing from the output of the international and European law in the field of human rights' protection. An objective of such an approach was the state's striving to ensure its citizens an institutionalized capacity to really exercise their constitutionally guaranteed rights and freedoms and, above all, the capacity to effectively claim those rights in case of their breach, especially by the public authorities. Furthermore, meeting the conditions laid down by the EU, concerning the standards of a democratic legal state and an appropriate degree of human rights guarantees on the constitutional and systematic level, was an undoubtedly stimulating factor.

The paper aims to provide a legal analysis of the issues related to the protection of rights and freedoms of persons and citizens on the grounds of the binding

Constitution of the Republic of Poland of 2 April 1997<sup>1</sup>. In particular, the analysis focuses on the catalogue of freedoms, rights and duties of persons and citizens contained in the basic law, as well as on their constitutional guarantees. This research has been conducted with reference to the doctrinal concepts of freedom, right and duty, provided in the Polish constitutional law literature. The author analyzes the classification and systematics of fundamental rights and freedoms introduced in the basic law, as well as the system of constitutional guarantees. The central part of the paper has been dedicated to the analysis of the catalogue of rights and freedoms of persons and citizens, their duties on the grounds of the binding basic law, created in line with the international standards, as well as their systematics, content and scope.

## **2. The Concepts of Freedom, Right and Duty, and Fundamental Rights in the Polish Constitutional Law Doctrine**

The concepts of freedoms and rights of persons and citizens are strictly connected with each other, both in the legal acts and in the subject literature (Matwiejuk, 2009: 89-93). Yet, it should be underlined that these concepts have different meanings, their origins vary and, as a natural consequence of the above, the technics of constructing the legal norms related to them are also diverse (Ławrynowicz-Mikłaszewicz, 2014b: 73-93). Human freedoms ensue from the natural rights, from the features which are congenital and appurtenant to man, such as an ability to speak (Ławrynowicz-Mikłaszewicz, 2014a: 100-115). Hence, a state cannot establish a freedom of speech; it can only recognize it (which is done most frequently) and it can also restrict it. Some authors, especially the representatives of the Thomist school, suppose that the natural rights originate from the Creator, i.e. they are a result of the manifested law (*ius divine*). Therefore, freedoms are not established by states; they may only be recognized, guaranteed and restricted by states.

Unlike freedoms, rights are created by states, which determine the catalogue and the scope of envisaged rights. It is similar with duties (Borski, 2016: 87-94).

The analysis of particular distinctive features underlying the notions of freedom, right and duty, as well as an attempt to compare them, lead to very interesting conclusions. First of all, a notable feature characterizing the freedom concept is the possibility to choose different behaviour according to an individual will of a person in question. Secondly, freedom is not derived from substantive law, as it is the case with a right or duty; therefore, law does not state a basis or a source from which it is derived. However, similarly to all other kinds of norms being in

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1 The Constitution of the Republic of Poland, *the Official Law Gazette 'Dziennik Ustaw'* 1997, No 78, item 483 with amendments.

force within a human society, law may restrict an individual freedom. This is its great value, in fact. Thirdly, a state authority, wishing to restrict a citizen's freedom, is obliged to determine the legal basis of its activity. And fourthly, the state is obliged to undertake all appropriate actions in order to assure an individual a possibility to exercise such sphere of freedom which the law has envisaged in its substantive sense.

In characterising the concept of a right, comprehended as an objective prerogative or individual entitlement determined by a legal norm, there are several notable features. Firstly, an authorized person always has an opportunity to choose a certain kind of behaviour, meaning that he/she can either exercise it or not. Secondly, a right is always derived from a legal norm in a substantive sense, which means that there is no right without a legal norm determining it. Thirdly, in case of a conflict, it is a citizen's duty to indicate the legal basis from which the right ensues. And fourthly, it is the state's duty to undertake appropriate actions and make every effort to guarantee the citizens' exercise of their rights.

In an attempt to characterise the concept of a duty as an element of a legal norm, we may note several distinctive features. Firstly, a duty implies that a citizen has no possibility to choose a certain kind of behaviour because, as opposed to freedoms and rights, there is an explicit order or a prohibition of a definite action. Secondly, a duty is always derived from a substantive legal norm; in other words, there is no duty without a legal norm. Thirdly, in case of a conflict, it is the obligation of the state to indicate the legal basis from which the duty ensues, and the citizen is required to comply with the legal provisions. And fourthly, it is also the state's duty to assure the citizens' compliance with the envisaged obligations by guaranteeing both (general) social and other (individual) citizens' interests.

In the constitutional law doctrine, the notion of fundamental rights is one of the principal concepts in the field of rights and duties of persons and citizens. They are distinguished by using a formal criterion. Thus, a right is considered to be fundamental in case a constitutional legislator has included it into the catalogue of constitutional rights. In creating such a catalogue, the legislator is usually guided by the accepted axiological principles and values. When constructing the basic law, the constitutional legislator always chooses and makes such rights fundamental which he conventionally recognizes to be such.

### **3. Commonly Accepted Classifications of Freedoms, Rights and Duties**

The constitutional law doctrine recognizes different criteria for classifying rights, freedoms and duties, such as: universality, restriction or non-restriction, and the manner of regulating the subject matter (substance) of rights and freedoms.

When using the criterion of universality in creating a catalogue of rights and freedoms, it is assumed that they are intended to refer and equally apply to all, which is the key requirement underlying the idea of equality. This principle allows for only few exceptions, e.g. a different regulation of the rights of minorities, children, etc.

According to another classification, rights and freedoms are divided into those which can be suspended or restricted, and those of an absolute character. The second category of rights and freedoms cannot be restricted.

There is also a classification based on the way of regulating the substance of rights and freedoms. Depending on the accepted legislation technics, constitutional norms can be applied directly or they may require concretization by way of a statute.

The substance criterion is elaborated in the UN documents, and it is most frequently and universally used by constitutional legislators in contemporary states when constructing the constitutional catalogues of human rights and freedoms. The distinctive criteria are the spheres of human life which are protected by constitutional legislators. From this viewpoint, human rights and freedoms can be divided into the following groups: personal, political, economic, social and cultural rights and freedoms.

The classification of duties and obligations is also based on the subject matter criterion. They are usually distinguished as follows: general duties towards the state, including the observance of legal regulations; duties in the field of defence, and economic duties. In addition, the contemporary constitutions more and more frequently impose the duty of protecting the natural environment.

#### **4. Guarantees of Rights and Freedoms**

In the constitutional law doctrine, the guarantees of rights and freedoms of persons and citizens are comprehended as the entirety of legal institutions, aimed at materializing constitutionally recognized freedoms and granted rights. The doctrine also defines the notion of substantive guarantees, being the entirety of economic and social results assuring the exercise of rights and freedoms. The effectiveness of substantial guarantees largely depends on a social and economic condition of a state, and is not directly determined by the constitutional law norms. Certainly, the most important guarantees for lawyers are legal guarantees (Wiśniewski, 2006).

Besides the institutional legal guarantees of the national law, another distinctive feature of a contemporary democratic state is the essential role of international and supranational guarantees. These guarantees are provided in the substantive

law norms, and contain both principles and legal institutes which are to ensure the rights and freedoms of persons and citizens. They also include some (general) principles and procedures, such as: open proceedings, public pronouncing of a sentence, the right to a fair trial, the right to defence, etc. The guarantees envisaged in the national law are (for example): independence and autonomy of courts, the Ombudsman's activity, an electoral protest, the control of constitutionality of law, and the right to file a constitutional complaint. Supplemental to the national guarantees are international and supranational institutions, including relevant principles and procedures. *Inter alia*, there are supranational and international courts, such as: the Court of Justice of the European Union, the European Court of Human Rights, the International Criminal Court, etc.

### **5. The Catalogue of Freedoms, Rights and Duties in the Constitution of the Republic of Poland**

The constitutional legislators of contemporary democratic states usually strive to envisage a comprehensive catalogue of rights and freedoms in separate chapters of their basic laws. Yet, placing them in separate parts of the constitution does not necessarily imply that they are not to be found elsewhere; for, it is not seldom that some rights are raised to the rank of the fundamental constitutional principles by being located in separate, specially designated first chapters of basic laws. Sometimes, the provisions related to rights and freedoms may be found in other chapters of the constitutions (for example, a passive electoral right can be normed in a chapter devoted to the Parliament). This peculiarity is also characteristic for the Constitution of the Republic of Poland (Banaszak, 1997b: 56-68; Banaszak, 2012: 143-163; Chmaj, M., Chmaj, J. M., 2016; Jabłoński, 2010; Jabłoński, 2014: 15-26).

Among the provisions of the Polish basic law related to the citizens' rights, freedoms and duties, we should (first and foremost) refer to those which create the normative framework of the catalogue. In the constitutional law doctrine, such provisions are most frequently distinguished as the *universal principles* referring to the citizens' fundamental rights, freedoms and duties. The starting point in formulating these provisions is a general statement that - besides the specific explicitly prescribed rights, freedoms and duties - the constitutions also contain some general provisions pertaining to the whole catalogue of rights and freedoms. The general principles constitute the basis of the system, being simultaneously the directives for its interpretation. Initially, constitutional acts determined the citizen's status in the state mainly through such general principles. The evolution of norms in this field shows a permanent tendency of making the rights and freedoms' guarantees more and more detailed, and

steadily increasing their number and level of concretization. Presently, these norms are the greatest constitutional value in the field of human rights, and they are of principal interpretation significance for the comprehension of all the other fundamental rights.

Relying on the deep analysis of the text of the Polish basic law, it may be concluded that the constitutional legislator has treated this substance in a rather detailed way, striving to construct possibly the most extensive catalogue of the fundamental rights and freedoms guaranteed to individuals. Following the example of the contemporary constitutions of other democratic states, the Constitution of the Republic of Poland has principally regulated the question of the fundamental freedoms, rights and duties in Chapter II: *The Freedoms, Rights and Obligations of Persons and Citizens*. Some of them are also part of the constitutional principles specified in Chapter I: *The Republic* (especially in Articles 1, 2, 11 and 12) (Garlicki, 1998: 83-115; Matwiejuk, 2009: 98-102).

Chapter II (*The Freedoms, Rights and Obligations of Persons and Citizens*) contains 57 provisions (Art. 30-86); thus, the regulation of this substance occupies a substantial part of the basic law. The systematics of the provisions related to the fundamental rights and freedoms contained in the Constitution of the Republic of Poland, their catalogue, as well as their content and scope have to a large extent been determined by the norms derived from the treaties and conventions, which remain part of the Polish legal order and are often directly binding<sup>2</sup>. Hence, they strictly correspond to the appropriate acts of international and supranational law. A special part in this field had been played by the treaties ratified by the Polish state before the adoption of the Constitution of 2 April 1997, for instance: the International Covenants of the UN (Wieruszewski, Hliwa 2002) or the European Convention on Human Rights. Therefore, they must have had a considerable influence on the content of constitutional regulations in this area. The creators of the Polish basic law only had to go further, i.e. expand the catalogue of the rights and freedoms of the persons and citizens in relation to the obligations which have been imposed in the meantime. An essential part of this Chapter is dedicated to the general principles concerning the comprehension and interpretation of all the rights guaranteed on the grounds of the Polish basic law.

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2 Some of the international treaties and conventions of considerable significance for the substance of the fundamental rights and duties of persons and citizens contained in the Constitution of the Republic of Poland, are: The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, The European Convention on Human Rights, as well as The Treaty on the European Union, The Treaty on the Functioning of the European Union, and the Charter of Fundamental Rights. A series of other international treaties related to human rights also play an important part in the constitutional framework.



*The general principles*, related to the whole catalogue of the fundamental rights and duties contained in the Constitution of the Republic of Poland, are placed in a separate systematization unit titled *General Principles* (Art. 30-37) (Matwiejuk, 2009: 94-98). In fact, it comprises three general principles: *dignity, liberty* and *equality*, which are used in the interpretation of all other rights and duties contained in the basic law (Pułło, 2014: 121-128). The objective of such conception seems to be a wish to solidify a democratic constitutional system: by promoting, providing for and enabling the exercise of citizens' fundamental rights and freedoms along with the most important and effective constitutional guarantees of their observance, by striving to assure humanitarian living conditions, achieve the multi-dimensional development of human beings, and bestow the individuals a right to participate and influence the society's development and its living conditions; and by obliging the public authorities in power to guarantee the observance of the fundamental rights and freedoms.

Achieving such a state of affairs, where the citizens play a real part in public life and influence the society's development, would undoubtedly contribute to the implementation of the fundamental constitutional principles of Poland, provided by its basic law (Bałaban, 2011: 41-56; Bisztyga, 2011: 319-328). The most important principles guaranteed by the Constitution are: the principle of the republican form of government (Art. 1), the principle of the democratic legal state (Art. 2), the principle of the sovereignty of the people (Art. 3), the principle of the civil society (Articles 11 and 12), etc. (Garlicki, 1998: 51-82; Pieniążek, 2016: 70-71; Pułło, 2014). It goes without saying that these principles contain elements emphasizing an opportunity for the citizens to actively participate in public life and shape the directions of the state policy; such active participation empowers the citizens to be co-responsible for shaping the state policy. Yet, the foundations of the democratic system are based on the constitutional provisions related to the fundamental rights and freedoms, including both personal and political ones, which guarantee the freedom of political parties' activities, the freedom of speech, and the freedom of association.

The basic law states that *dignity* constitutes the source of all the rights and freedoms of persons and citizens (Art. 30). This general principle is derived from the natural law, and established as being inherent, inalienable and inviolable; thus, public authorities are obliged to abide by and protect this principle (Dudek, 2009: 43-65; Pieniążek, 2016: 76).

The general principle of *liberty* is protected in Article 31 of the Constitution. Every person is obliged to respect the freedoms and rights of others. No one can be compelled to do anything that is not required by law. Any limitation upon the exercise of the constitutional freedoms and rights may be imposed exclusively



by a statute, and only when necessary in a democratic state for the benefit of its security or public order, or to protect the natural environment, health and public morality, or the freedoms and rights of other people. At the same time, such restrictions cannot violate the essence of freedoms and rights.

The principle of *equality* is, on the one hand, comprehended as being equal before the law and having the right to equal treatment by public authorities; on the other hand, it implies a prohibition of being discriminated in political, social or economic life on any ground (Art. 32). Therefore, the essence of the right to an equal treatment is based on the fact that all are equal before the law and that no one, without a justified reason, can be treated differently because of his sex, age, origin, language, religion, convictions, viewpoints, state of health, disability or any other ground. The right to be treated equally also seems to refer to children, who are supposed to be handled as human beings and allowed to decide about their matters in the degree corresponding to their level of development. Sex equality constitutes an element of the equality principle and simultaneously its supplement, for both men and women have been guaranteed equal rights in family, political, social and economic life (Art. 33). Therefore, equality must be promoted in social and professional life, especially in the field of the rights to education, employment and advancement, the right to be identically remunerated for work of a similar value, the right to social security, as well as the rights to occupy positions, exercise functions and be awarded public honours and decorations. Therefore, on the one hand, equality implies a right to be treated equally and, on the other hand, it entails a prohibition of being discriminated in political, social and economic life.

Additionally, the general principles in the catalogue also include: the right to have Polish citizenship (Balicki, Banaszak, 2007: 9-21; Banaszak, 2012: 132-143; Jagielski, 1998) and the right of the Polish citizens to protection abroad provided by the Polish state authorities (Art. 34 and 36); protection of the Polish citizens belonging to national or ethnic minorities, including their freedom to maintain and develop their own language, customs, traditions and culture by way of establishing their own educational and cultural institutions, institutions designed to protect religious identity, as well as by participating in the resolution of matters connected with their cultural identity (Art. 35); protection of the stateless persons, who the basic law empowers with a possibility to exercise the rights and freedoms guaranteed in the Constitution, with the exceptions provided by law. Placing these rights among the general principles proves their high rank within the fundamental principles included in the Polish Constitution. These provisions establish a constitutional guarantee of Polish citizenship, and no Polish citizen can be deprived of or exempted from it. While the state assures special care and protection to its citizens abroad and on the territory of Poland,

this provision also applies to the national and ethnical minorities, and stateless persons residing in Poland.

The influence of the international and European law on the constitutional catalogue of rights and freedoms of persons and citizens is also prominent in the classification. The Polish Constitution has adopted a classical division of rights and freedoms based on the criterion of the subject matter (substance) which is applied in the systematics of the fundamental freedoms and rights. Thus, the Constitution recognizes three distinctive groups: personal, political, and economic, social and cultural rights and freedoms. Citizens' duties and obligations are regulated in a separate catalogue.

In the Polish Constitution, personal rights and freedoms are regulated in Chapter II (Art. 38-56), under a separate systematisation unit titled *Personal Rights and Freedoms*. This extensive and well-developed catalogue includes the following rights and freedoms: the right to life (Art. 38); prohibition of subjecting anyone to scientific experimentations, including medical ones, without the patient's voluntarily expressed consent (Art. 39); prohibition of subjecting anyone to torture and cruel, inhuman or degrading treatment and punishment, including the application of corporal punishment (Art. 40); personal liberty, security and inviolability, which implies the prohibition of any deprivation or limitation of liberty, except in cases provided by law and imposed only in accordance with principles and under the procedures specified by statutes, comprising the constitutional rights of a detained person (such as: the right to be informed, immediately and in a manner comprehensible to him, of the reasons for such detention; to immediately inform his family or a person indicated by him of the deprivation of liberty; to appeal to a court for immediate decision upon the lawfulness of such deprivation, except by a sentence of a court, and the right to compensation for unlawful deprivation of liberty) as well as the obligations towards a detained person (such as: handing the person over to a court for the consideration of his case within 48 hours from the moment of his detention; releasing him/her, unless a warrant of temporary arrest issued by a court, along with the specification of the charges laid against him, has been served within 24 hours of the time of being given over to the court's disposal; treating him in a humane manner (Art. 41) (Fules, 1996); criminal responsibility only for committing a prohibited act subject to a penalty by a statute in force at the moment of its commission, except those which nevertheless constituted an offence within the international law (Art. 42, point 1); the right to defence at all stages of criminal proceedings, including the right to choose a counsel (Art. 42, point 2); the presumption of being innocent until proven guilty by the final court judgment (Art. 42, point 3); the right to a fair trial, comprehended as a right to a just and public hearing of one's case, without undue delay, before a competent,

impartial, autonomous and independent court (Art. 45), as well as the right to appeal a decision of the court of the first instance; forfeiture of property can only be admitted in cases specified by a statute and by virtue of a final court judgment (Art. 46); the right to legal protection of one's private and family life, honour and good reputation, as well as the right to decide about one's personal life (Art. 47); freedom and privacy of communication (Art. 49); the inviolability of home, including the admissibility of any search of a home, premises or vehicles only in cases and in a manner specified by a statute (Art. 50); an extensively comprehended right to privacy, entailing the right of everyone to keep secret any information concerning him and the prohibition of imposing an obligation by virtue of a statute to disclose such information; the prohibition of acquiring, collecting and making any information on citizens, other than that which is necessary in a democratic legal state, accessible by public authorities; as well the right of everyone to have access to official documents and data collections concerning him, including the right to demand the correction or deletion of information which is untrue, incomplete or acquired by means contrary to a statute (Art. 51); the freedom of unhindered movement and the right to choose a place of residence and stay within the territory of the Republic of Poland, and to leave its territory, also containing the prohibition of expelling a Polish citizen from the country and the lack of possibility to implement any ban on return, and an opportunity to return and permanently settle in Poland in case of a person whose Polish origin has been confirmed in accordance with a statute (Art. 52); freedom of conscience and confession (Art. 53), comprising the freedom to profess or accept any religion according to one's personal choice; to manifest it, individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing rites or teaching; to have sanctuaries and other places of worship depending on the needs of the believers, as well as the right of individuals, wherever they may be, to benefit from religious services; the right of the parents to ensure their children moral and religious upbringing and teaching in accordance with their convictions; the right to implement the religion of a church or another legally recognized religious organization as a subject taught at schools, provided that the other peoples' freedom of conscience and religion are not infringed thereby; the freedom to publicly express religion, which may be limited only by means of a statute and only where this is necessary for the defence of state security, public order, health, morality or the freedoms and rights of other persons; prohibition to be compelled to participate or not in religious practices, including the prohibition of being obliged to disclose one's views, religious convictions or beliefs; freedom of speech (Barciak, 1997: 47-65), or more extendedly, the freedom of expression, containing the freedom to express one's opinions, as well as acquiring and disseminating information, the prohibition of implementing preventive censorship on the means of social

communication and the licensing of the press, with a possibility to introduce, by virtue of a statute, an obligation of receiving a permit for the operation of a radio or a television station (Art. 54); prohibition of extradition of a Polish citizen, especially including the cases of persons suspected of committing a crime for political reasons without the use of violence, or if the extradition would violate rights and freedoms of persons and citizens, whereas the exceptions to the prohibition to extradite Polish citizens apply to cases where extradition is granted upon a request of a foreign state or an international judicial body, if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which Poland is a member, provided that the act covered by a request for extradition has been committed outside the Polish territory and constituted an offence under the Polish law in force, or would have constituted an offence under the Polish law in force if it had been committed within its territory, both at the time of its commitment and at the time of making the request; the exclusion to these conditions applies in case of an extradition requested by an international judicial body established under an international treaty ratified by Poland, in connection with the crime of genocide, crime against humanity, war crime or the crime of aggression, covered by the jurisdiction of that international body, and the admissibility of extradition will be adjudicated exclusively by courts (Art. 55); the rights of foreigners to seek asylum in the Republic of Poland in accordance with the principles specified by a statute, including a possibility for a foreigner seeking protection from persecution to be granted the status of a refugee in accordance with the international agreements to which Poland is a party (Art. 56).

The catalogue of political rights and freedoms is envisaged in Chapter I of the Polish Constitution (Art. 11 and 12), determining the fundamental constitutional principles, as well as in Chapter II (Art. 57-63), under a separate systematisation unit titled *Political Freedoms and Rights*. The most significant rights and freedoms are contained in Articles 11 and 12. Article 11 guarantees the freedom to establish political parties and organize their activities; they 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 creation of state policy by means of democratic methods. Article 12 guarantees the freedom to establish trade unions, associations, civil movements, foundations and other forms of citizens' social activism, and to organize their activities on the basis of law, for the purpose of safeguarding the citizens' interests and expressing their opinions. Both provisions express and determine the scope of the supreme and fundamental constitutional principle of promoting the development of the civil society on the grounds of the Polish Constitution. Instead of being placed in the chapter

dedicated to the rights and freedoms, where the universally guaranteed freedom of association is included separately, these two provisions have intentionally been placed in the chapter devoted to the basic principles of state organization because they underline the possibility of citizens' active participation in the shaping the state's policy directions. For, such an activity makes the citizens empowered to be co-responsible for shaping the state policy. Whereas Article 11 states the main goals and objectives of creating political parties, its content should not be comprehended in the way that only political parties have been granted the monopoly in the field of 'creating the state's policy'.

In addition, the catalogue of political freedoms and rights contained in Chapter II of the Constitution (Art. 57-63) includes: the freedom of assembly, comprising the freedom of organizing and participating in peaceful assemblies (Art. 57); the freedom of association (Art. 58), except for the events whose purposes or activities are contrary to the Constitution or statutes; it comprises the freedom of associating in trade unions, socio-professional organizations of farmers and employers' organizations, as well as the right of trade unions, employers and their organizations to negotiate, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other arrangements, and the right of trade unions to organize employees' strikes and other forms of protest subject to the limitations specified in a statute, which can restrict or forbid strikes organized by specified categories of employees or in specific fields for the purpose of protecting the public good, whereas the scope of the freedom of association in trade unions and employers' organizations and other freedoms related to trade unions may only be subject to such statutory limitations as are permissible in accordance with the international agreements to which Poland is a party (Art. 59); the right of access to the public service based on the principle of equality for all the Polish citizens who enjoy full public rights (Art. 60); the right to obtain information on the activities of public authorities and persons discharging public functions, including the right of access to documents and entry to the sittings of collective public organs formed by universal elections (Art. 61); the right to participate in referenda and elections (Art. 62), and the right to submit petitions, motions and complaints in the public interest, in one's own interest or in the interest of another person, with his/her consent, to the public authorities as well as to organizations and social institutions in connection with the performance of their duties prescribed within the field of public administration (Art. 63).

Economic, social and cultural rights and freedoms are envisaged in Chapter II (Articles 64-76), under a joint systematization unit titled *Economic, Social and Cultural Rights*, which contains the following catalogue: the right to ownership, other property rights and the right of succession, which are subject to equal legal

protection for everyone, whereas the right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such a right (Art. 64); the freedom to choose and pursue a profession and to select one's place of work, while an obligation to work may be imposed only by a statute; the permanent employment of minors under the age of 16 is prohibited and a minimum level of remuneration for work or the manner of setting it are laid down by a statute; the public authorities are obliged to pursue policies aiming at full and productive employment by implementing programmes of combating unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention (Art. 65); the right to safe and hygienic conditions of work and annual paid holidays and leaves, as well as the right to statutorily specified days-off, and the maximum permissible number of working hours (Art. 66); the right to social security in case of being incapacitated to work due to sickness or handicap, as well as in case of having attained a retirement age, including the right to social security of the unemployed, involuntarily remaining without work and having no other means of support for their living (Art. 67); the right to health protection, equal access to health care services financed from the public funds, guaranteed to all the citizens, irrespective of their material situation, along with the duty of public authorities to ensure special health care to children, pregnant women, handicapped people and elderly persons; the obligation of public authorities to combat epidemic diseases and prevent the negative health consequences of the degradation of the natural environment, as well as their support for the development of physical culture, particularly among children and youth (Art. 68); the right of disabled persons for aid in ensuring their subsistence, adaptation to work and social communication provided by public authorities (Art. 69); the right to education, which is compulsory until the age of 18; education in public schools is free of charge, while it is allowed to introduce payments for certain services provided by public institutions of higher education; parents have the right to choose schools other than public ones for their children; citizens and institutions have the right to establish primary and secondary schools and institutions of higher education and educational development institutions, and public authorities are obliged to ensure universal and equal access to education for citizens; the Constitution also guarantees autonomy for the institutions of higher education (Art. 70); the right of families (particularly those with numerous children or single-parent families) in difficult financial and social circumstances to get special assistance from public authorities, including the right guaranteed to mothers to receive special assistance before and after bearing a child; in its social and economic policy, the state is obliged to take into account family welfare and well-being (Art. 71); the rights of children, who are under special protection of the state; everyone has the right to demand of public authorities to protect



children against violence, cruelty, exploitation and demoralization, including the right of children deprived of parental care to get care and assistance provided by public authorities; both parents and persons responsible for children, as well as public authorities, are obliged to hear and consider their opinions, and insofar as possible give priority to their views in the course of establishing their rights; moreover, the Constitution has established the Commissioner for Children's Rights for child protection purposes (Art. 72); the freedom of artistic creation, scientific research and dissemination of their results, as well as the freedom to teach and enjoy cultural goods (Art. 73); the right and obligation of public authorities to deliver the information relating to the state of environment and its protection, to pursue policies ensuring ecological security for current and future generations, as well as to support the activities of the citizens for the benefit of protection and improvement of the environment quality (Art. 74); the right of the citizens to satisfy their housing needs, including the obligation of public authorities to pursue conducive policies, and in particular to combat homelessness, to promote the development of low-income housing and support the activities aiming at the acquisition of one's own apartment by each citizen, and to protect the tenants' rights (Art. 75); the obligation of public authorities to protect the rights of consumers, customers, lessors or lessees against any activities threatening their health, privacy and safety, as well as against dishonest market practices (Art. 76).

The subsequent unit in the systematics of Chapter II of the Constitution, titled *Means of Protection of Freedoms and Rights* (Art. 77-81), regulates the constitutional guarantees for exercising the fundamental rights and freedoms, as well as the instruments of their protection (Banaszak, 2012: 162-186; Matwiejuk, 2009: 102-108). The provisions contained in this part include: the right to compensation for any harm caused by the actions of public authorities in contravention of the law; a statute cannot bar anyone a recourse to a judicial proceedings in pursuit of the claims alleging the infringement of freedoms or rights (Art. 77); the right of each party to appeal against the judgments and decisions issued in the first instance (Art. 78); the right of every person whose constitutional freedoms or rights have been infringed to submit a claim to the Constitutional Tribunal in the matter of conformity of a statute or another normative act, on the basis of which a court or a public administration authority has issued a final decision on one's freedoms and rights or obligations, with the Constitution, except for the right to asylum and granting the status of a refugee (Art. 79); the right of everyone to file a motion and apply to the Commissioner for Citizens' Rights to receive assistance in the protection of rights and freedoms infringed by public authorities (Art. 80).



The citizens' duties are envisaged in Chapter II (Art. 82-86) of the Constitution, in the systematization unit titled *Obligations* (Banaszak, 1997a; Banaszak, 2012: 186-201; Matwiejuk, 2009: 108-110). They can be systematized as follows: general obligations towards the state, and obligations in the field of defence. The general obligations towards the state include: the duty of loyalty of every Polish citizen to the Republic of Poland, as well as concern for the common good (Art. 82); the duty to observe the law of the Republic of Poland (Art. 83) and fiscal obligations, comprising compliance with responsibilities and public duties, including the payment of taxes (Art. 84). The obligations in the field of defence contain: the duty of every Polish citizen to defend the Homeland and the duty to perform a military service or substitute service, if a citizen is not able to perform military service due to his religious convictions or moral principles, if the obligation to perform such service is imposed on him by a statute (Art. 85). Following the example of other contemporary constitutions, the Polish basic law also imposes an obligation on citizens to take care of the natural environment, including the responsibility for causing its deterioration (Art. 86).

## 6. Conclusion

The concepts of rights and freedoms have different meanings, even though these terms are most frequently correlated and closely associated with each other. The distinctive meanings have been determined by their various origins deriving from the constitutional law doctrine. The distinctions in the essence of rights and freedoms have considerable influence not only in comprehending the contents and scopes of particular rights and freedoms but also on the way and technics of constructing the norms establishing and regulating them. The situation is similar in respect of the citizens' obligations.

The catalogue of the fundamental freedoms and rights envisaged in the Constitution of the Republic of Poland of 1997 has largely been created under the influence of the international law output, particularly stemming from the Polish obligations in the field of human rights. The Polish constitutional legislator has treated the rights and freedoms in an extensive and detailed way, dedicating much space and attention to them in the content of the basic law. A vast majority of the fundamental rights and freedoms have been placed in Chapter II of the Constitution, while some of them have been raised to the rank of the constitutional principles and located in Chapter I. The general principles of dignity, liberty and equality, which are expressly proclaimed in the Constitution, are another element of considerable importance for comprehending and interpreting particular freedoms and rights: they are the prism through which all other freedoms and rights contained in the Polish basic law ought to be assessed. In

that context, the important role of the Polish constitutional law doctrine and the output of the Constitutional Tribunal should by no means be underestimated, particularly considering the fact that the content and scope of fundamental rights and freedoms are derived from the legal doctrine and judicial interpretation of the envisaged legal provisions. Finally, constitutional guarantees are the issue of principal significance for the full and effective exercise of the envisaged freedoms and rights. Besides the institutional legal guarantees provided by the national law, the international and supranational guarantees also have an essential role in creating the basic laws of contemporary democratic states. In particular, they are a distinctive feature of constitutional laws of the states undergoing an intensive impact of integration processes. Concurrently, they constitute an additional and highly effective shield and gauge for assessing the proper operation of the state's internal mechanisms.

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## **ПРАВА И СЛОБОДЕ У УСТАВУ РЕПУБЛИКЕ ПОЉСКЕ**

### **Резиме**

*Гарантовање основних права и слобода грађана и омогућавање њиховог правилног остваривања и строгог поштовања су један од најважнијих задатака савремених демократских држава, а истовремено и прави изазов. Ниво очувања индивидуалних права несумњиво зависи од тога да ли је држава у стању да створи ефикасан систем њихове заштите. У том погледу, изузетно важну улогу има каталог основних права и слобода садржаних у уставу, који заједно са уставним гаранцијама, остаје један од основних атрибута заштите људских права. С обзиром да је основни закон (устав) главни и врховни извор основних права и слобода, свако кршење уставних норми представља повреду уставом загарантованих права. За разлику од држава које одликује дуга традиција државности и стабилна демократија, овај проблем је посебно актуелан у државама које су још увек у фази учвршћавања основа своје државности, и које још увек траже, настоје да успоставе и/или проверавају своје моделе развоја демократије, што за ове државе представља приличну новину.*

*Овај рад има за циљ да пружи детаљну правну анализу каталога права, слобода и обавеза гарантованих Уставом Републике Пољске из 1997. године, који је тренутно на снази, као и да сагледа изворе права и аксиолошку основу која потиче из међународних стандарда. У том контексту, аутор најпре разматра кључне појмове у теорији пољског уставног права који се односе на права, слободе, обавезе, и њихове уставне гаранције.. Аутор затим даје преглед одређених права, слобода и дужности садржаних у пољском Уставу, и разматра њихов обим, ограничења, начин тумачења и разумевања. На крају, аутор указује на проблеме у оквиру уставних гаранција основних права и слобода.*

**Кључне речи:** *Основна права и слободе, Устав Републике Пољске, садржај и тумачење основних права и слобода, поштовање људских права, делотворни правни инструменти.*