Teka Komisji Prawniczej PAN Oddział w Lublinie, vol. XIV, 2021, no. 1, pp. 105-120
https://doi.org/10.32084/tekapr.2021.14.1-10

THE INFLUENCE OF THE COMMUNIST AUTHORITIES' REFERENCES TO THE MARCH CONSTITUTION ON THE FORMATION OF THE POLITICAL SYSTEM IN POLAND IN THE YEARS 1944–1947

Dr. habil. Marzena Dyjakowska, University Professor
Department of History of the System and Law, Faculty of Law, Canon Law and Administration,
The John Paul II Catholic University of Lublin, Poland
e-mail: marzena.dyjakowska@kul.pl; https://orcid.org/0000-0001-5040-6058

Abstract. The main purpose of this paper is to answer the question of whether the communist authorities' references to the March Constitution in the 1944 Manifesto of the Polish Committee of National Liberation had a real impact on the shaping of the political system in Poland in 1944–1947. The authorities paid particular attention to the illegal adoption of the April Constitution, refusing its binding force, thus denying the legal activity of the Polish government in exile. The principles on which the March constitution was based will be discussed and then compared with the principles declared by the new authorities and their application in practice. Attention will be paid to the understanding of these principles that differs from the meaning adopted in the interwar period.

Keywords: March Constitution, April Constitution, Polish political system, Polish National Liberation Committee

INTRODUCTION

The starting point for these considerations is the declaration in the Polish Committee of National Liberation's (in Polish: PKWN) Manifesto that the new authorities operate based on the Constitution of March 17, 1921, which, according to the authors of the text, was "the only valid legal constitution enacted by law."[1] It was noted that "Emigration «government» in London and its delegation in the country is a self-proclaimed authority, an illegal authority. It is based on the unlawful fascist constitution of April 1935. The government inhibited the fight against the Nazi occupier and its adventurous policy pushed Poland towards a new catastrophe."[2] The basic assumptions of the March Constitution were to be in force "until the convocation of the new legislative, Sejm (i.e. Parliament) elected by universal, direct, equal, secret and relative vote, which adopts a new constitution as an expression of the will of the people."[3]

Consideration should be given to the following issues: can the communist allegation regarding the illegality of adopting the April Constitution be justified and what impact on the formation of the political system in Poland in 1944–1947, i.e.

[1] Journal of Laws of 1944 No. 1, Annex.
[2] Ibid.
[3] Ibid.

until the adoption of the so-called The Small Constitution, i.e. two constitutional acts containing the basic principles of the functioning of the state system,[4] had declared maintaining the basic assumptions of the March Constitution.

1. THE QUESTION OF LEGALITY AND BINDING FORCE OF APRIL CONSTITUTION

Referring to the allegation of the illegality of the April Constitution, we should omit the question of the legality of the establishment and operation of communist authorities in Poland – the National State Council, aspiring to the role of a temporary parliament, and the Polish Committee of National Liberation which has its rich literature, and focus on arguments put forward still in the interwar period. Doubts were raised above all by how the April Constitution was adopted in parliament. The procedure was based on Article 125 of the March Constitution, which provided for three variants of its amendment: "Amendments to the Constitution may be adopted only in the presence of at least half of the statutory number of deputies or members of the Senate by a 2/3 majority. A proposal to amend the Constitution should be signed by a quarter of the statutory number of deputies and announced at least for 15 days. The Sejm elected for the second time in a row, based on this Constitution, may revise the Constitutional Act by its resolution adopted by a 2/3 majority of voters, in the presence of at least half of the statutory number of deputies. Every 25 years after the adoption of this Constitution, a constitutional act is to be reviewed by a simple majority of the Sejm and Senate, joined for this purpose in a National Assembly."[5]

It should be emphasized that the quoted article distinguished two concepts: amendment and revision of the constitution. Professor W. Komarnicki, an outstanding constitutionalist of the interwar period, in the publication Polish political law (genesis and system), published in Warsaw in 1922 (i.e. shortly after the adoption of the March Constitution), explained that revision is a fundamental change, i.e. a change in fundamental concepts, a change in the system, while the normal or partial change applies to points of less significance. The author noted that Article 125 provided for a twofold revision of the constitution: periodic, which is necessary and takes place every 25 years, and extraordinary, which can be made by Sejm' (the second in turn, elected by the constitution of 1921) resolution, i.e. without the participation of the senate, and this resolution should be adopted by a 3/5 majority voting in the presence of at least half of the statutory number of deputies [Komarnicki 1922, 581]. The institution of the periodic review, which

[4] The Constitutional Act of 4 February, 1947, on the election of the President of the Republic, Journal of Laws No. 9, item 43 and the Constitutional Act of 19 February 1947 on the system and scope of activity of the highest organs of the Republic, Journal of Laws No. 18, item 71.

[5] Act of 17 March 1921, the Constitution of the Republic of Poland, Journal of Laws No. 44, item 267.

refers to the Constitution of May 3,[6] was based on the assumption that the durability of basic constitutional principles should be estimated at the age of one generation, which is just 25 years on average. However, the first constitution after regaining independence was adopted in specific conditions, not conducive to the elaboration of lasting solutions: "among the eastern war, internal confusion caused by anarchic agitation of borderers, lack of participation of representatives from the Eastern and Silesian borderlands in the constitutional assembly, they wanted [sc. the authors of the constitution] to allow the second Sejm, in turn, to review the constitution adopted in these conditions" [ibid., 582]. At the same time, the possibility was provided to amending individual provisions of the constitution (referred to as "constitutional amendment") with separate participation of the Sejm and Senate, while maintaining a qualified quorum in each of the chambers (at least half of the statutory number of deputies and senators) and a qualified majority – also in each of the chambers (two-third votes) [ibid., 581].[7] Article 125 also required the signature of the appropriate number of deputies and senators on the application and the submission of the application in advance (at least 15 days) before the planned voting.

Taking into account the requirements provided in Article 125 regarding the amendment and revision of the constitution, it is easy to notice that in 1935 only the option provided in item 1, i.e. amendment by the Sejm and Senate, could be considered. The Sejm elected in 1930 was not the second parliament elected during the period of validity of the March Constitution,[8] and 25 years enabling the

[6] Art. VI of the Constitution of May 3 provided for the revision of the constitution at the extraordinary Sejm convened every 25 years for this purpose: "By preventing violent and frequent variations of the national constitution on the one hand, and recognizing the need to improve it after experiencing its effects on public well-being, We mark the time and time of the revision and the improvement of the constitution every twenty-five years, wanting to have such an extra-coordinative constitutional parliament regulated by separate law to describe it."

[7] The author answers the doubt that may arise as to why a change in the constitution requires stricter requirements than revision since the effects of the latter go much further. Well, in his opinion, a change to the constitution is, in fact, easier to carry out than a review, because, despite the specific requirements, it can be done at any time, while a review (except in the exceptional case of an extraordinary review) can be made only every 25 years.

[8] The Sejm of the second term, which met on March 27, 1928, failed to revise the constitution. Admittedly, the initiative to use the right granted to the Sejm to revise the constitution was raised by deputies from the Non-partisan Bloc for Cooperation with the Government (including Walery Sławek), and the Constitutional Commission proposed to supplement the Sejm's regulations regarding the review procedure, which was adopted by the Sejm in January 1929. Individual deputies' clubs (Club of the Non-partisan Bloc for Cooperation with the Government, Parliamentary Association of Polish Socialists, Parliamentary Club of the Polish Peasant Party "Liberation," Parliamentary Club of the Peasant Party, Parliamentary Club of the Polish Peasant Party "Piast," Christian Democracy and National Workers' Party and National Club) submitted motions to revise the constitution, and the Constitutional Commission began its discussion on January 11, 1930. Because of the government crisis, the work of the Constitutional Committee was stopped, on 29 March 1930 the session of the parliament was closed, and on 29 August 1930, the president dissolved the parliament and the senate, citing in his message the inability of the parliament to reform the system. See more: Komarnicki 1937, 89–129.

revision of the constitution would not expire until 1946. Since the issue of reforming the system was not made by the Sejm of the second term, it was dealt with by the Sejm of the third term elected in 1930.[9] A Non-partisan Bloc for Cooperation with the Government (in Polish: BBWR), having a simple majority in the Sejm (not qualified, needed to amend the constitution), submitted on 6th of February 1931 a draft already submitted to the Sejm of the previous term in 1929, in the form of not amendments to the text of the current constitution, but a full act, with the provision that it is only a starting point for further work. At the meetings of the Constitutional Commission held weekly during two ordinary sessions of the Sejm in 1931/32 and 1932/33, designated referents presenting individual issues, formulating theses on which the discussion was then held, and MP S. Car expressed his opinion on them as the main referent [Komarnicki 1937, 160–61]. The work quickened after a speech of MP W. Sławek at the congress of legionaries on August 6th, 1933, where he came up with the concept of departing from the text of the March Constitution as the basis for reform and of adopting new ideological assumptions, among others strengthening the president's power. On December 14th, 1933, during the plenary session of the BBWR club, general clerk S. Car presented the principles of the new constitution included in 63 theses, referring to the speech of W. Sławek, which did not constitute a proposal to change the current constitution, but were based on different assumptions: concentration of power in the hands of the president and oligarchic composition of the Senate. On December 20th, 1933, the Constitutional theses were presented at a meeting of the Constitutional Commission, and then, on January 11, 1934, discussed. After its completion, the Commission adopted a resolution on 18 January to submit to the Sejm a report on the work on the revision of the constitution, enclosing the theses adopted by the Commission together with their justification. On January 26, a session of the Sejm to debate on these theses was held. After the break, due to the absence of opposition MPs from the room, MP Stanisław Car, the referent of theses, stated: "because [...] the opposition is not interested in issues of repairing the political system, so I think that there are no obstacles to deal with this matter right away," and he brought, that "the theses which we have presented today, which were discussed in our Commission for three years, be considered a draft Constitution" and that the title "constitutional theses" should be replaced by another title "constitutional act." S. Stroński, the only opposition

[9] The primary importance of the reform was emphasized by the president in his address to the opening of the Sejm on December 9, 1930: "Among the many necessary works that the newly elected Sejm and Senate will have to carry out, the repair of the Constitution comes to the fore. The constitution, until now in force in Poland, was developed in the tumult of the external war and among deep internal divergences. It was not an independent achievement of its own experience, thoughts and it did not turn out to be a perfect work, not giving our State conditions for the development of its strength [...]. The elections introduced a representation in a significantly changed composition to the Sejm and Senate. It allows me to hope that the new Sejm and the new Senate will start working with all goodwill and, in the first place, will undertake great work on repairing the fundamental rules governing Republic" (Polish Monitor No. 284).

MP present in the Hall, protested against this request. Then, S. Car requested that the agenda had been supplemented and that the constitution had been adopted following the shortened formal proceedings.[10] The Sejm adopted proposals regarding the agenda and adopted the constitution in ordinary voting by rising from seats, without counting votes. The required 2/3 constitutional majority was visible, but no quorum was established. Therefore, the constitution was adopted in violation of the law. Even if it were assumed that the subject of the vote was not a revision but a mere amendment to the constitution, the provisions of Article 125 of the March Constitution, according to which a proposal to amend the constitution should be signed by at least a quarter of the statutory number of deputies (and there was no such proposal on the agenda at all) and announced at least 15 days before voting. It was also not stated whether the quorum requirement (at least half of the statutory number of deputies) was completed; this fact was even admitted by the Speaker of the Sejm M. Rataj: "I admit that the majority of 2/3 could be seen by eye, since all deputies stood, while the quorum by eye can not. So this provision of agenda's regulation has not been completed." Procedural manipulations were even rebuked by Marshal J. Piłsudski himself, who decided that the adoption of the constitution by "wit and trick" was not correct and ordered to erase the bad impression through a detailed debate in the Senate. Since the BBWR had a corresponding majority in Senate, there was no fear of the outcome of this debate, but once again the law was broken. On March 23th, 1935, the Sejm voted on the Senate's amendments. 139 votes were rejected, 260 were adopted, and the Marshal of the Sejm stated that since the rejection of the Senate amendments did not cast the 11/20 votes required by the March Constitution to reject amendments to the act adopted by the Senate, the amendments were adopted. However – as MPs Róg and S. Stroński pointed out – in this case, art. 35 of the March Constitution, referring to ordinary laws, should not be applied, but art. 125 concerning the procedure for amending the constitution and requiring a 2/3 majority to pass a constitution in both chambers. After the argument of the Marshall of the Sejm in favour of the correctness of the applied procedure, the objection raised by MP Stroński was rejected by a majority of the Sejm votes at the next meeting on March 28th, 1935. The issue of the constitutional amendment was definitively resolved by an act of promulgation by the President of the Republic of Poland on April 23rd, 1935. The new constitution promulgated in No. 30 of the Journal of Laws on April 24th, 1935 came into force on the day of its promulgation. Its date was not the date of the final resolution of the Sejm, but the date of promulgation by the President, hence it is called the April Constitution [Komarnicki 1937, 169–70].

Although the April Constitution was undoubtedly adopted in a manner contrary to the law, it cannot be said that this affected the question of the binding force of that constitution. According to the opinion of one of her opponents, S. Stro-

[10] Article 18 of the Sejm Regulations (Print No. 388) provided: "The Sejm may adopt the following shortening of formal proceedings: a) dispense of motions or reports from printing, b) admission of an immediate hearing without referral to commissions."

ński (the only opposition MP present at the Sejm meeting on January 26th, 1934), denounced in 1944: "As no provision was made by the Polish Constitution or Parliamentary rules for the power of further appeal in this matter (there was no Constitutional Tribunal), the repeal of the old and the adoption of the new Constitution of April 23rd, 1935, came into force, and, although that Constitution was passed illegally, it is legally binding, just as a court judgement may be unjust, but is final and legal when all possibilities of appeal are exhausted […]. Certainly the Sejm, through its majority, acted unjustly and against the rules. But it does not follow from that that anyone is entitled at any time and in any place to reject the 1935 Constitution" [Stroński 1944, 4–5]. Therefore, the argument indicated in the PKWN Manifesto regarding the unlawfulness of the April Constitution cannot be considered fully justified, nor can the argument regarding its fascist character. Such an argument was based on one of the ideological theses of the April Constitution – the principle of concentration of power in the person of the president. Other fundamental principles of the Constitution were: the principle of solidarity, the primacy of the state over the individual, and elitism. The principle of elitism, emphasizing the role of distinguished categories of citizens, can be considered particularly controversial. Special rights of the "elite" were confirmed by, among others, the procedure of elections of Senate and President. Therefore, at least to some extent, one of the most basic principles of the modern state was disregarded – equality before the law.

2. THE CONSTITUTIONAL PROVISIONS IN CASE OF WAR AND THE ACTIVITY OF POLISH GOVERNMENT DURING WORLD WAR II

Undoubtedly, a good feature of the April Constitution was that it contained well-thought-out provisions allowing for the continuation of the state authorities during the war, even in case of the occupation of the entire territory of Poland. According to Article 24(1), the President should appoint a successor during the war in case of his vacancy before a peace treaty by individual act published in a government newspaper. Article 24(2) provided that the term of holding the office of the successor was to last until the expiry of three months from the peace treaty, and the term of holding the office of the president was extended for that period [Komarnicki 1937, 211]. Secondly, the April Constitution granted the president extraordinary powers reducing the powers of the Sejm and Senate: the right to extend the term of holding the office of both chambers until the peace treaty (which was justified by the impossibility of holding elections), the right to open, postpone and close sessions of the Sejm and Senate on dates adapted to the needs of the defence of the state, appointing the Sejm and Senate in a reduced composition (Article 79(3)). The president had the right to issue decrees regarding all state legislation (except for constitutional amendments), based on the constitution itself, i.e. without authorization in legislative made by the chambers whose activities were, however, limited during the war. The president's executive powers du-

ring the war included: appointing the Supreme Commander (Article 13(2d)) and holding him accountable (Article 63(4)), a decision to use the armed forces to defend the state (Article 63(2)), ordering martial law (Article 79(1)) and exercising the powers prescribed by the Act on Emergency (Article 79(3)) [ibid., 217–18, 240–41].[11]

Based on the provisions of the April Constitution Polish state institutions rebuilt after the September 1939 defeat performed their functions in France. This constitution was – as W. Rostocki emphasizes – the basis of Polish legalism in France and treating Poland as a partner by the governments of France, Great Britain and the USA was unthinkable if there were no Polish authorities abroad based on legal grounds [Rostocki 1988, 9]. This sentence, shared by many opposition activists, was aptly reflect the words of S. Stroński in the already mentioned work: "Any Polish Government which arbitrarily announced the elimination of the binding 1935 Constitution would at that moment cease to be the Polish Government, which position it holds precisely and only by virtue of the binding Constitution, and in the same way, any President who recognized and agreed with such an announcement would cease to be President of the Republic, an office which he holds precisely and only by virtue of the Constitution in force […] Moreover, because of their indisputable legal continuity the present Authorities of the Polish state, with the President and Government, are recognized by all the world with the exception of hostile Governments. If the legal continuity were broken foreign States could recognize some new ostensible authority or other, or not recognize any authority at all. From standing on the firm ground of the law, expressed in the recognition of its authorities and far-reaching international agreements, the Polish state would be thrown on the mercy or the lack of mercy of friendly and unfriendly States. Anyone who cares for Poland must rigidly watch over legal continuity" [Stroński 1944, 15–16].

The last words of the quoted statement refer to the situation that has arisen since the end of July 1944, when quasi-governmental structures, i.e. the Polish Committee of National Liberation (PKWN) and its branches, which since the beginning was active in parts of the central Polish territories freed from German occupation 1945 took the form of the so-called Provisional Government. From 31 December 1943, the National State Council (KRN) was active, aspiring to the role of a temporary parliament. Thus, between July 1944 and July 1945, two independent two systems of state authorities operated. The first in the form of the highest authorities of the Republic of Poland in England (President, Prime Minister, Council of Ministers and Supreme Commander) and their branches in Poland – the

[11] The author points out that all extraordinary powers, and thus not falling under the division, were associated with the conduct of war requiring the cooperation of all state authorities. The solutions adopted in the April Constitution were to prevent illegal practice used in European countries during the last war (i.e. World War I), constituting a supplement to constitutional provisions determining the functioning of state organs, which in the war conditions proved to be insufficient. These solutions, which – as the author emphasizes – an original feature of the April Constitution, provided the president with "almost absolute power" [ibid., 249].

Delegate of the Government of the Republic of Poland in the State, the Vice President of the Government of the Republic of Poland and the National Council of Ministers – acted based on the provisions of the April Constitution and were recognized by the international community, except for the USSR and countries associated with the Third Reich [Górski 2004, 40–41]. Rejecting the April Constitution, the National State Council questioned the legality of the authorities appointed on its basis and their right to decide the fate of the country. Therefore, the "repeal" of the April Constitution had obvious political aspects: after all, this constitution was the legal basis for the functioning of the legal Polish authorities in exile. On the other hand, the reference to the March Constitution created a semblance of formal grounds for the KRN to reach power through constitutional means: the takeover of power was not – according to this concept – a coup d'etat, but the removal of usurpers, claiming their authority based on legal acts not recognized as legal by most of society, from power [Burda 1984, 129–30; Góra 1972, 77; Działocha and Trzciński 1977, 5; Trzciński and Surowiec 1984, 150]. Finally, in mid-1945, KRN got international approval based on the agreements of three powers concluded in Yalta and Moscow – the US, USSR and Great Britain – the Provisional Government of National Unity (TRJN).

3. THE BASIC PRINCIPLES OF MARCH CONSTITUTION

Basic principles of the March Constitution were: the republican system of the state, national sovereignty, the separation of powers, state uniformity (with Silesia's autonomy) and respect for civil rights. Thus, Article 1 of the March Constitution stated that "the Polish State is the Republic of Poland." The term "Republic," referring to the pre-partition tradition, was used in the sense of the republican system, i.e. one where the hub and source of power is the nation.[12] The Constitution adopted the principle of national sovereignty, expressing it with the formula "sovereignty in the Republic of Poland belongs to the nation" (Article 2). The nation delegates attributes of authority to its organs implementing the scope of power specified by the constitution. According to the further content of Article 2, "the Nation's organs in the field of legislation are the Sejm and the Senate, in the field of executive power – the President of the Republic of Poland together with responsible ministers, in the field of justice – independent courts." The consequence of the concept of national sovereignty was that each of the authorities had limited power both in terms of material scope and duration [Komarnicki 1922, 213]. The Constitution entrusted each of these organs with appropriate sco-

[12] The quoted article referred to, among others, to Article V Constitution of May 3: "all power of human society originates from the will of the nation." The March Constitution adopted the concept of a nation in the sense of the state, in contrast to a nation in the ethnographic sense. The word "nation" meant a population element in the concept of the state. The Constitution, therefore, distinguished "nation" from "nationality." Therefore, the Polish state was a national creation, it had a uniform political face, which did not prejudge the existence of broad rights of elements ethnically different from it, i.e. nationalities [Komarnicki 1922, 215–16].

pe of activity, adopting the principle of separation of powers into legislative, executive and judicial.[13] According to the March Constitution, Poland was a uniform state, because all three elements constituting the concept of the state (territory, nation and power) referred to the whole of the Republic. The territory of the state was uniform, which can be inferred from the lack of any territorial distinctions in the constitution, the nation was unified because there was only one Polish citizenship, and, finally, there was uniform power, having the feature of universality and exclusivity both in terms of personal and territorial scope [Komarnicki 1922, 224].[14] Finally, Chapter V regulated universal citizenship rights and obligations.[15] Among the rights should be distinguished: political rights, civil rights in the strict sense and rights of liberty. Political rights consisted in the cooperation of citizens in state functions: active and passive electoral rights to the Sejm and Senate (Articles 12, 13 and 36), the participation of citizens in the activity of administrative offices (Article 66), and the right to choose self-government bodies (Article 67), equal access to public offices (Article 96), the election of judges of peace (Article 76), participation in the jury (Article 83), as well as the right of citizens to submit, individually or collectively, petitions to representative bodies and public authorities (Article 107). Civil rights in the strict sense were the protection of individual goods and interests by the state [ibid., 537–39]. These rights included: equality before the law (Article 96), protection of life, freedom and property (Article 95), providing citizens with judicial justice (Article 98), the right to compensation for damage caused to citizens by state authorities (Article 121), the aforementioned right of petition. This category of rights also included the use of state care in specific areas: the right to labor protection (Article 102), the right to moral and religious care in public establishments (Article 102), maternity care (Article 103), children's right who do not have sufficient parental care for the care and assistance of the state (Article 103), special care for the work of children and women (Article 103), the right to free education in state schools (Article 119). Finally, the rights of freedom are those thanks to which the individual obtained a sphere of activity free from state interference. These were: personal freedom (Article 97), inviolability of the apartment (Article 100), the confidentiality of correspondence (Article 106), freedom of resettlement, emigration and choice of occupation (Article 101), inviolability of property (Article 99), free expressing thou-

[13] The division was not carried out with full consistency, in particular, the advantage of the legislative authority over the executive was evident. See more: Dyjakowska 2013, 27–47.

[14] The autonomy of Silesia, whose system was regulated by the constitutional act of July 15, 1920, Journal of Laws No. 73, item 497, was not in contradiction with the principle of uniformity of the state. Despite the existence of a separate legislative body – the Silesian Sejm, whose competence covered almost the entire scope of internal affairs (excluding foreign, military and some other matters), the territory of Silesia was part of the territory of the Republic of Poland, being under the rule of the central organs of the Republic of Poland.

[15] The Constitution allowed the exercise of civil rights not only by citizens but also by foreigners on the condition of reciprocity, i.e. depending on the granting, by the state to which the foreigner belonged, analogous rights to Polish citizens (Article 95(2)).

ghts and beliefs (Article 104), freedom of the press (Article 105), the right to the coalition, gathering and forming associations and unions (Article 108), freedom of scientific investigations and teaching (Article 117), religious and worship freedom (Article 111–112), religious self-government (Article 113–116), nationality freedom (Article 109–110) [Komarnicki 1922, 539–40].

4. THE COMMUNIST PRINCIPLES RULING POLISH POLITICAL SYSTEM

For the basic distinguishing features of the so-called socialist constitutionnalism, however, four principles can be recognized: the sovereignty of the working people of cities and villages, the leadership role of the communist party, the representative form of exercising power, the social value of the means of production.[16] The communists understood the principle of the sovereignty of the working people of towns and villages in a manner completely contrary to the principle of sovereignty of the nation. The understanding of Article 1 of the March Constitution stating that the Polish State was the Republic of Poland, was dissimilar because the sovereign was no longer the nation, which determined a different understanding of the term "Republic" ("Rzeczpospolita"). The sovereignty of working people was understood as the supreme authority in the sense of dictatorship, which Lenin in his work written in 1920 *A Contribution to the History of the Question of the Dictatorship* defined as follows: "Dictatorship means unlimited power, based on strength, not on the law [...]. The scientific term «dictatorship» means nothing more nor less than authority untrammelled by any laws, absolutely unrestricted by any rules whatever, and based directly on force." Based on the definition above, a well-known Polish specialist in the field of constitutional law, F. Siemieński, stated that sovereign could not be a state organ whose power is based on law, even if it was the highest authority among various organs and even if its power resulted from the constitution. In practice, therefore, only the ruling class can be recognized as the subject of supreme power in a state, which itself decides about lawmaking and its content, and is not bound by it, because – according to the author – no norms are flowing from someone's will and at the same time obligatory [Siemieński 1976, 72–74]. The structure of supreme power mentioned above, assuming the existence in the state of the highest organ based on its law, and consequently legally irresponsible, completely denied the republican form of government and the democratic nature of the system adopted in the March Constitution.

[16] According to A. Peretiatkowicz, the basic assumptions of the March Constitution, mentioned in the Manifesto of the Polish Committee of National Liberation, have not been formulated anywhere, therefore they cannot be considered legal norms in the proper sense, but only guidelines, directives for the legislator, i.e. the National Council and the government [Peretiatkowicz 1948, 140; cf. Idem 1947, 60]. M. Buszyński believes, however, that these basic assumptions of the March Constitution were interpreted in some acts issued after the Manifesto, especially in the Constitutional Act of 1947 [Buszyński 1947a, 616; Idem 1947b, 103ff].

Unlike the March Constitution, which recognizes the nation as the supreme authority, in the sense of all citizens of the state, the communists used the phrase "working people of cities and villages." This term meant not all the population of the state, but only working people, people living from their own and socially useful work, people who did not exploit someone else's work [Burda 1978, 175; Rozmaryn 1949a, 63, 80; Siemieński 1976, 75; Zamkowski 1977, 34]. According to F. Siemieński, working people include those social groups whose attitude to the means of production is defined in the form of 1) state ownership, i.e. the working class in the traditional sense of the word, i.e. manual workers, and the intellectuals working, i.e. white-collar workers; 2) cooperative ownership, i.e. mainly members of production cooperatives in the countryside and urban work cooperatives; 3) small-scale ownership, i.e. working peasants and craftsmen, owners of small individual manufacturing workshops. The working people do not, however, include those social groups whose way of earning their livelihoods is based on the exploitation of other people, that is, according to the author's description, "both the remains of the capitalist class and the parasitic class" [Siemieński 1976, 75–76]. The author also admits that the principle of working people's sovereignty is different, and even contrary to the principle of national sovereignty, because it clearly indicates the class nature of the state and provides the basis for applying restrictions on political rights to certain groups of citizens [ibid., 77–78]. He tries to defend the validity of this principle by showing that it is not contrary to the principle of national sovereignty, because the working people in each state constitute the majority of the nation, therefore the state power, realizing the interests and the will of the working people, and thus the majority of the nation, in a sense becomes the power of the whole nation. He admits, however, that the other social classes may (although non-necessary) be deprived of political rights and freedoms [ibid., 77–79], which meant their discrimination and denial of democracy.

The consequence of the principle of the sovereignty of the working people of cities and villages understood in this way was the adoption of the principle of the leadership role of the communist party, because "Without maintaining the leadership role of the communist party towards the working class and other classes of the working people, the power of the people can neither be acquired nor subsequently exercised" [Siemieński 1976, 87; cf. Burda 1978, 180–81]. The communist party is a ruling party able to independently exercise state power, which consists of three functions: 1) lawmaking; 2) appointing organs implementing the law; 3) control of the activities of these organs. The principle was adopted that the party exercises power through its representative bodies. According to F. Siemieński, this meant that 1) representative bodies, to be real, and not just formal, should express the interests and the will of the people; 2) should also be organs of state authority, i.e. be positioned in the state apparatus so that they form its political basis, that they form a decisive group of organs; 3) decisions taken by bodies recognized by the constitution as representative bodies of the people should be treated by citizens and by other state organs as the decisions of the people

themselves [Siemieński 1976, 97]. Representative bodies were to be national councils based on Soviet models, as local state authorities. They were headed by the National State Council, which was based on the unpublished Provisional Statute of National Councils adopted by the National State Council on January 1, 1944, replaced by the Act on the organization and scope of operation of national councils adopted by the National Council on September 11, 1944.[17] The system of national councils, existing in all units of the administrative division, was to be, following the adopted Soviet doctrine, the basis of the political system [Peretiatkowicz 1948, 150]. According to the principle of concentration of power, it was in these organs that from the central level through the local levels the power of "working people of cities and villages" was to be exercised [Górski 2002, 302]. At the same time, reference was made to the democratic principles of the March Constitution, which was to counteract the belief that Poland was "Sovietized."[18] However, the national councils in voivodships and districts functioning at the time did not come from democratic elections, as the majority of their members were delegated by specific political formations and related social organizations [Kallas and Lityński 2000, 58]. By a decree of the Polish Committee of National Liberation of 23 November 1944 on the organization and scope of local government,[19] national councils were merged with the local self-government institution, Article 3 stated: "Territorial self-government represented by the local national council is a corporation governed by public law and has legal personality," at the same time national councils have been granted broader powers than those owned by territorial self-government in Poland during interwar period.[20] The councils were allowed to exercise social control over all state administration organs and to influence the appointment and dismissal of general government administration organs. The combination of the system of national councils with traditional local self-government solutions constituted a political decision with propaganda overtones to disseminate the institution of national councils, treated with reluctance as a foreign element of the political system, among public opinion [Witkowski 2020, 424].

The idea of social ownership of the means of production had little in common with the constitutional principles contained in the March Constitution. As in the Soviet constitution of 1936, social ownership existed in the form of state property

[17] Journal of Laws No. 5, item 22.

[18] According to Article 1 of this Act: "Until the establishment of a permanent political representation of the nation, following the principles of the constitution of 17 March 1921, national councils operate as temporary legislative and self-government bodies in the territories liberated from the occupier of the Republic of Poland." Of course, such a wording suggesting that the institution of national councils was known under the March Constitution is not true. See also: Kallas and Lityński 2000, 58.

[19] Journal of Laws No. 14, item 74.

[20] This state of affairs survived only until the Act of 20 March 1950 on territorial organs of uniform state authority came into force; as a result, national councils ceased to be organs of local self-government and executive organs of local self-government were dissolved [Kallas and Lityński 2000, 60].

(nationwide property) and group ownership, in particular cooperative ownership. Although unlike in the Soviet Union, the land in Poland was not nationalized, the land reform carried out under the decree of the Polish Committee of National Liberation of 6 September 1944[21] led to the takeover by the State Land Fund of all land properties over 50 ha [Słabek 1974, 41–42]. For owners of land goods above this limit, compensation in the form of so-called landowner's pension was provided, which in practice was paid only to a small group of expropriated persons [Markiewicz 2016, 185–86; Machnikowska 2016, 169–70]. Only about 1/3 of the land obtained in this way went to peasant families; the remaining part was taken over by the State Land Real Estate and State Forests. During the expropriations, the belongings of displaced landowners were often robbed, they were also forbidden to settle in the district where they had their estates before. As a result of the land reform, approx. 12–15 thousand representatives of landowners, presented in the communist propaganda as exploiters, and even collaborators with the occupier, were deprived of property and opportunities for professional development. The lack of respect for private property was also visible in the nationalization of almost all industry sectors,[22] and the so-called "Trade battle," i.e. a program for liquidating private trade in Poland and replacing it with state-owned trading facilities. The PKWN Manifesto announced that "German, hated orders restricting economic activity and trade between the village and the city will be lifted."[23] The state will support the broad development of cooperatives. A private initiative that increases the pulse of economic life will also find support from the state. "Meanwhile, in the years 1945–1946 a completely new form of a trade organization in Poland, i.e. a state trade facility, developed. It was started by state-owned production enterprises, which, apart from manufacturing, sold their products. In April 1945, Minister of Industry Hilary Minc announced the creation of sales centres to relieve enterprises from commercial activities. In this way, the state completely subordinated itself the sale of the products of the most important kinds of industry [Kaliński 1970, 33]. Acceptance for the three-sector trade model, i.e. private, cooperative and state trade, proved to be only a tactic. As early as December 1945, Minister H. Minc announced the "battle for trade and cooperative activity." In 1947, after the April plenary, the Polish Workers' Party, which had a parliamentary majority after the rigged elections to the Legislative Sejm (January 17), began to develop a program for internal market reforms [Idem 1974, 167–76; Kunicki and Ławecki 2017, 16–21]. In May 1949, a Price Office was established at the Ministry of Industry and Trade, whose task was to determine acceptable wholesale and retail margins for food products and to develop a list of food products covered by maximum prices, as well as to set maximum prices for industrial products and the amount of gross profit for wholesale and retail. The executive

[21] Journal of Laws No. 4, item 17.
[22] Act of 3 January 1946 on taking over the ownership of the basic branches of the national economy, Journal of Laws No. 3, item 17.
[23] Journal of Laws of 1944 No. 1, Annex.

apparatus of the Office was constituted by regional Quoting and Price Listing Committees, whose auxiliary bodies were Social Price Control Committees at district national councils. In June of that year, the Act on Fighting against Expenses and Excessive Profits in Trade was passed.[24]

Already in July 1947, the first lists of maximum prices for groceries appeared in all provinces. New prices were set too low, in isolation from the market situation. Merchants indicated, among others, too low gross margins, not including transport costs, which resulted in unprofitable sales. Under the deficit of some items, the lowering of official prices caused speculation to increase. Some facts of insufficient information on price changes also happened; they led to the punishment of wholesalers and shopkeepers who did not provide official prices due to the lack of current price lists. The Social Price Control Committees harassed traders with constant inspections and sent the results of the inspections to the courts. Inventories of goods, trading books, invoices and transactions carried out by private enterprises were monitored [Kaliński 1970, 100–104; Idem 2016, 203; Kunicki and Ławecki 2017, 24–32].[25] The committees had the right to seize the property or even close the enterprise. To force private sector representatives to give up their businesses, tax authorities imposed so-called surtax, that is, a tax assessing additionally after paying the turnover and income tax [Kunicki and Ławecki 2017, 40]. Another element of the state policy towards private trade was the licensing of enterprises.[26] Merchants applying for a concession, i.e. consent to conduct business, had to submit an application to the industrial authorities, which was then arbitrarily reviewed by the Chambers of Commerce and Industry, and pay a concession fee depending on the amount of turnover (the lowest rate was 2%, the highest was 24%). The Ministry of the Treasury made the acceptance of the license application conditional on the repayment of all tax arrears and additions. Accumulation of financial receivables, often exceeding the possibilities of entrepreneurs, in connection with the fear of buyers whether they will receive permission to continue their business, resulting in the resignation of a large number of business owners from applying for concessions, therefore many merchants voluntarily gave up their enterprises [Kaliński 1970, 105–107; Idem 1974, 177–79; Idem 2016, 202]. All those actions of state organs indicate that the intention of the communist authorities was not so much to improve the living conditions of the society, as the official propaganda proclaimed, but to destroy private trade and wholesale [Kunicki and Ławecki 2017, 29].

The model of the highest state authorities created by the communist authorities testified – contrary to the declarations contained in the Polish Committee of Na-

[24] Journal of Laws No. 43, item 218.

[25] The authors point out that only in the first year of the "battle for trade" the commissions audited 300 trade facilities, preparing over 69,000. criminal records. On their basis fines of 800 million zlotys were imposed, and 788 people were sent by the Special Committee to labour camps.

[26] Act of 2 June 1947 on permits for running enterprises and carrying out commercial activities, Journal of Laws No. 43, item 220.

tional Liberation – not to observe, but to disregard the principles of the March Constitution.[27] This model, later confirmed in the Small Constitution of 1947, was based not on the principle of dividing, but the principle of concentration of state power along with the associated principle of the leadership role of the communist party. Also, the lack of respect by the communist authorities of constitutionally guaranteed civil rights and freedoms shows that the declared adherence to the principles of the March Constitution was not confirmed in reality.

REFERENCES

Burda, Andrzej. 1978. *Polskie prawo państwowe*. Warsaw: Książka i Wiedza.

Burda, Andrzej. 1984. "Charakter polityczno-prawny Manifestu PKWN oraz naczelne zasady ustroju politycznego (Czytając Manifest Lipcowy w 40-tą jego rocznicę)." *Zeszyty Naukowe Akademii Spraw Wewnetrznych* 12, no. 6:126–39.

Buszyński, Marian. 1947a. "Obowiązujące normy Konstytucji marcowej." *Gazeta Administracji* 24, no. 11–12:614–21.

Buszyński, Marian. 1947b. "Mała Konstytucja." *Gazeta Administracji* 24, no. 3–4:102–13.

Dyjakowska, Marzena. 2013. "Realizacja zasady trójpodziału władzy w konstytucji marcowej." *Teka Komisji Prawniczej PAN Oddział w Lublinie*, vol. VI, 27–47.

Działocha, Kazimierz, and Janusz Trzciński. 1977. *Zagadnienie obowiązywania Konstytucji marcowej w Polsce Ludowej 1944–1952*. Wrocław: Ossolineum.

Góra, Władysław. 1972. *Powstanie władzy ludowej w Polsce: z zagadnień kształtowania się zalążków ludowego aparatu władzy w latach 1943–1944*. Warsaw: Książka i Wiedza.

Górski, Grzegorz. 2002. *Historia administracji*. Warsaw: LexisNexis.

Górski, Grzegorz. 2004. *Wokół genezy PRL*. Lublin: Wydawnictwo KUL.

Kaliński, Janusz. 1970. *Bitwa o handel 1947–1948*. Warsaw: Książka i Wiedza.

Kaliński, Janusz. 1974. "«Bitwa o handel» (1947–1948)." In *Gospodarka Polski Ludowej 1944–1955*, edited by Janusz Kaliński, and Zbigniew Landau, 162–88. Warsaw: Książka i Wiedza.

Kaliński, Janusz. 2016. "Następstwa «bitwy o handel» (1947–1948)." In *„Rewolucja społeczna" czy „dzika przebudowa"? Społeczne skutki przekształceń własnościowych w Polsce (1944-1956)*, edited by Tomasz Osiński, 199–210. Lublin: Instytut Pamięci Narodowej. Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu. Oddział w Lublinie.

Kallas, Marian, and Adam Lityński. 2000. *Historia ustroju i prawa Polski Ludowej*. Warsaw: PWN.

[27] A purely propaganda significance should therefore be attributed to the statement of Stanisław Rozmaryn, who wrote about the principles of the March Constitution as an element of the Constitutional Act of 1947: "The upholding of the basic assumptions of the 1921 constitution concerns basic democratic norms and political institutions […]. These basic democratic assumptions were in the People's Republic of Poland not only restored, but also deepened, because it is only in the popular system that the conditions for the full implementation of the principles of democracy are created. The people's state is a higher level in the history of Polish democratic political thought, because it implements the principle of the National Sovereignty. This is a consequence of the revolutionary changes that characterize the period of People's Poland. As a result of these changes, the economic foundations of the political power of landowners and capitalists in Poland were overthrown, and thus democracy ceased to be just a slogan and a word, but became a reality. Only when the Nation gained its economical souveregnity, the political power of the people has become […]. And thanks to this, the basic democratic principles of the 1921 constitution could not only be maintained, but were deepened and filled with content" [Rozmaryn 1949b, 137–38; see more: Idem 1948, 18–21].

Komarnicki, Wacław. 1922. *Polskie prawo polityczne (geneza i system)*. Warsaw: Księgarnia F. Hoesicka.

Komarnicki, Wacław. 1937. *Ustrój państwowy Polski współczesnej. Geneza i system*. Wilno: Polska Druk. Świt.

Kunicki, Kazimierz, and Tomasz Ławecki. 2017. *Kronika PRL 1944–1989*. Vol. 37: *Bitwa o handel*. Warsaw: Edipresse-kolekcje, Bellona.

Machnikowska, Anna. 2016. "Dezintegracja systemu prawa własności w Polsce Ludowej w latach 1944–1956." In *„Rewolucja społeczna" czy „dzika przebudowa"? Społeczne skutki przekształceń własnościowych w Polsce (1944-1956)*, edited by Tomasz Osiński, 167–82. Lublin: Instytut Pamięci Narodowej. Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu. Oddział w Lublinie.

Markiewicz, Marcin. 2016. "Przekształcenia własnościowe w polskim rolnictwie (1944–1956)." In *„Rewolucja społeczna" czy „dzika przebudowa"? Społeczne skutki przekształceń własnościowych w Polsce (1944-1956)*, edited by Tomasz Osiński, 183–98. Lublin: Instytut Pamięci Narodowej. Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu. Oddział w Lublinie.

Peretiatkowicz, Antoni. 1947. "Konstytucja Marcowa a Konstytucja Lutowa." *Gazeta Administracji* 24: no. 2:56–67.

Peretiatkowicz, Antoni. 1948. *Państwo współczesne. Wiadomości ogólne. Ustrój polityczny Anglii – Stanów Zjedn. – Francji – Związku Radzieckiego – Polski. Wydanie dziewiąte przejrzane i uzupełnione*. Poznań: Księgarnia Wł. Wilak.

Rostocki, Władysław. 1988. *Stosowanie Konstytucji kwietniowej w okresie drugiej wojny światowej 1939–1945*. Lublin: Redakcja Wydawnictw KUL.

Rozmaryn, Stefan. 1948. "W jakim zakresie obowiązuje dziś Konstytucja z 17 marca 1921 roku." *Państwo i Prawo* 3, no. 1:10–29.

Rozmaryn, Stefan. 1949a. *Nauka o państwie. Zagadnienia podstawowe*. Warsaw: Akademicka Spółdzielnia Wydawnicza.

Rozmaryn, Stefan. 1949b. *Polskie prawo państwowe*. Warsaw: Książka i Wiedza.

Siemieński, Feliks. 1976. *Prawo konstytucyjne*. Warsaw: PWN.

Słabek, Henryk. 1974. "Reforma rolna." In *Gospodarka Polski Ludowej 1944–1955*, edited by Janusz Kńaliński, and Zbigniew Landau, 41–70. Warsaw: Książka i Wiedza.

Stronski, Stanisław. 1944. *The Two Polish Constitutions of 1921 and 1935*. Glasgow: The Polish Library.

Witkowski, Wojciech. 2020. *Historia administracji w Polsce 1764–2020*. Warsaw: PWN.

Zamkowski, Władysław. 1977. *Wstęp do nauk o państwie i prawie*. Part 1. 8th edition. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.