

CHAPTER 2

THE RULE OF LAW IN POLAND – VALUES AND LEGALISM



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Abstract

The rule of law is one of the fundamental principles of a state's political system; however, in practice, its meaning proves to be non-uniform. The concept is generally understood as a set of principles and values that constitute the legal order of the state. This Chapter explores the understanding of the rule-of-law clause within the Polish legal system. It first presents the historical background to the introduction of this clause, which entered the Polish legal order through the December Amendment to the Constitution of the People's Republic of Poland in December 1989, serving primarily a symbolic function. It then outlines the definition of the rule of law coined by Polish legal scholars, who view the concept as encompassing systemic principles, fundamental rights and freedoms, and principles of good legislation. Further, the Chapter examines how this clause has been interpreted in the jurisprudence of the Constitutional Tribunal, and the role it has played in shaping the state's system. For the CT, the clause served as a source of systemic principles and individual rights and freedoms before the current Constitution came into force. Today, it is primarily interpreted as a source of the principles of good legislation.

Keywords: Art. 2, Constitutional Tribunal, December Amendment, democracy, legalism, rule of law

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1. Introduction

The principle of the rule of law is a cornerstone of a state's political system, setting boundaries within which public authorities may act. Although both states and the international community reference this principle, its practical meaning varies. It is therefore necessary to determine how the rule-of-law principle is understood within a particular national system and what significance it holds for the functioning of the state and its organs. This Chapter focuses on the distinctive nature of the rule of law in Poland, as seen from the constitutional perspective. Specifically, it addresses the historical context of the clause's introduction, its interpretation by the CT, and its relevance to the formation of the state system. The Chapter concludes by considering how this understanding affects the actions of Polish public authorities across the legislative, executive, and judicial branches.

2. The Historical Background of the Rule-of-Law Clause in Poland

2.1. The Rule-of-Law Clause in the Polish Legal Order Since 1989

The clause affirming the Republic of Poland as a democratic rule-of-law state was introduced at the outset of the systemic transformation in December 1989,¹ through amendments to the Constitution of the People's Republic of Poland of 22 July 1952. This was the second amendment in the spirit of democratic transition; the first, known as the April Amendment,² restructured the organisation of public authority but did not alter the state's fundamental principles. Rather, it introduced institutional reforms aimed at establishing a new system.³ Only the December Amendment⁴ – formally the Act amending the Constitution of the People's Republic of Poland, enacted on 29 December 1989 by the Sejm of the People's Republic of Poland (10th term) – altered the state's foundational principles.

This amendment changed the title of the Constitution to 'the Constitution of the Republic of Poland' and revised the heading of Chapter One to read 'The foundations

1 Banaszak, 2012.

2 i.e. the Act amending the Constitution of the People's Republic of Poland of 7 April 1989. It resulted from the so-called round table arrangements, i.e. a systemic agreement reached between the party representing the communist government (Pl. PZPR, Eng. the Polish United Workers' Party) and the so-called social party, representing the Solidarity movement. More on the historical background of the transformations in 1989, Sokolewicz, 1990, p. 23.

3 More on that: Kruk, 1998, pp. 57–58.

4 The Act of 29 December 1989 amending the Constitution of the People's Republic of Poland (Journal of Laws, No. 75, item 444).

of the political and economic system'. Art. 1, as amended, then read: 'The Republic of Poland is a democratic rule-of-law state, implementing the principles of social justice'.⁵

This formulation introduced three systemic clauses into the Polish legal order: the rule-of-law state, the democratic state, and the state implementing social justice. These clauses signalled a new axiological framework and set out directives, imperatives, and prohibitions.⁶ The December Amendment also abolished the core principles of socialist constitutionalism, replacing them with those recognised in democratic legal orders. While intended as a temporary solution, the amendment addressed urgent obstacles to political, social, and economic transformation, and introduced reforms necessary for the transition process.⁷ At the time, there was little prospect of the swift adoption of a new constitution.

The Legislative Commission worked on introducing amendments to the Constitution. Its working party proposed two versions of Art. 1 on 28 December 1989. The first read: 'the Republic of Poland is a democratic rule-of-law state' (*Rzeczpospolita Polska jest demokratycznym państwem prawnym*), and the second one: 'the Republic of Poland is a state of legality' (*Rzeczpospolita Polska jest państwem praworządnym*). The Commission adopted the first version by majority vote. During the Sejm's plenary debate, the provision was ultimately formulated as follows: 'the Republic of Poland is a democratic rule-of-law state and implements the principles of social justice' (*Rzeczpospolita Polska jest demokratycznym państwem prawnym, urzeczywistniającym zasady sprawiedliwości społecznej*).⁸

It should be noted that Polish scholars did not use the concept of a 'rule-of-law state' during the transformation period, and most jurists were unfamiliar with the term. The more familiar concept was that of legality (*praworządność*). During the Commission's deliberations, it was argued that the term 'legality' was better rooted in Polish legal scholarship than 'rule-of-law state'. Legality, understood as the obligation of state organs to act in accordance with the law, had already been envisaged in the Constitution of the People's Republic of Poland under the framework of socialist legality (*praworządność socjalistyczna*). It was believed that legality expressed the idea of the rule of law, and that introducing a new term would be unnecessary. Ultimately, however, the term 'rule of law' was chosen to highlight the systemic shift and to symbolise a departure from the previous regime of socialist constitutionalism, as a reference to legality alone could not fulfil that purpose.⁹

5 Morawska, 2003, pp. 14–19, 35.

6 Morawska, 2003, p. 35. More on the principles of the political, social and economic system in the December Amendment, see Mołdawa, 1993, p. 76.

7 Morawska, 2003, p. 25.

8 Wyrzykowski, 1998, p. 65. More on the opposing views expressed in the works of the subcommittee and on the proposals of the new wording of Art. 1, see: Morawska, 2003, pp. 30–37. The members of the subcommittee stated that the declaration 'the Republic of Poland is a democratic state' says too little, while the formulation 'a democratic rule-of-law state' refers to ample theoretical analyses.

9 Morawska, 2003, p. 34. Likewise: Tuleja, 2016.

The principle of a rule-of-law state, recognised as a fundamental element of the Republic of Poland's constitutional system, symbolised a departure from the socialist systems of Central and Eastern Europe. In the following years, several countries in the region adopted the same principle in their newly enacted constitutions.¹⁰ The inclusion of this clause in the Polish legal order marked a turning point in the transition from real socialism to democracy symbolising the systemic transformation.¹¹

The December Amendment was not a mere reform or revision but the start of a qualitative transformation. It also signalled the direction of the political and economic reforms that had begun in April 1989, aimed at building a fundamentally different system based on opposing political values.¹² With the introduction of this clause, a new formula of statehood emerged. In accordance with the amended provision, the Republic of Poland is a democratic rule-of-law state that implements the principles of social justice. The three systemic clauses introduced – democratic state, rule-of-law state, and state implementing social justice – reflected a new axiological order intended to serve as the foundation for the emerging constitutional system. These clauses also marked a rejection of socialist democracy, as expressed in Art. 7 of the Constitution of the People's Republic of Poland, under which power was exercised in a monocentric manner.¹³

This new axiological system was built upon the principles of democracy, human rights and freedoms, and legality. These values replaced the principles characteristic of totalitarian and authoritarian regimes, which aimed to create ideologically uniform states and societies.¹⁴ The newly established legal principles underpinning the political system of the Republic of Poland included the principles of a democratic state, a rule-of-law state, and a state of social justice. In addition, the Constitution introduced the principles of national sovereignty, representative democracy, legality (obliging state organs to act within the law), political pluralism, and the participation

10 For example: Section 2(1) of the Constitution of the Republic of Hungary of 1990: 'the Republic of Hungary shall be an independent and a democratic state governed by the rule of law'. Art. 2 of the Albanian Act on the Fundamental Constitutional Regulations of 29 April 1991: 'The Republic of Albania is a democratic rule-of-law state'. Art. 1(3) of the Constitution of Romania of 9 December 1991: 'Romania is a democratic and social State governed by the rule of law (...)'. Art. 1 of the Constitution of the Slovak Republic of 1 September 1991: 'The Slovak Republic is a sovereign, democratic state governed by the rule of law (...)'. Art. 1 of the Constitution of the Czech Republic of 16 December 1992: 'The Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law (...)'.
11 Morawska, 2003, pp. 15–16.
12 Morawska, 2003, p. 35.
13 The adopted shape of the clause of the democratic rule-of-law state constituted a revolutionary change. It meant severance with the principle of the sovereignty of the working people and introduction of the principle of the sovereignty of the Nation, as well as the expression of its will in the form of direct and indirect democracy. Cf. the resolution of the CT of 16 January 1994, W 12/94, OTK ZU No. 1/1996, item 4.
14 Kubiak, 1991, p. 15.

of local self-government in the exercise of power. Additionally, the freedom of economic activity was recognised as a foundational principle of the Republic.¹⁵

Between 1990 and 1997, a series of constitutional statutes were enacted as temporary solutions to prepare the ground for a comprehensive constitutional framework. During this transitional period, the clause on a democratic rule-of-law state ensured that public authority in Poland would operate within the framework of the Constitution and statutory law amid significant political and economic change.¹⁶

The Polish constitution-maker did not define the term ‘democratic rule-of-law state’. Although this notion appeared in the constitutions of other democratic countries, no universally accepted definition existed. Legal scholarship and jurisprudence have since offered varied interpretations of its constituent elements. Constitutional courts, in particular, have interpreted the term in context, inferring specific principles from it on a case-by-case basis.¹⁷ Hence, when the clause was incorporated into the Polish Constitution, there was no comprehensive legal conception to clarify its meaning.¹⁸ The Constitutional Tribunal (CT) gradually developed the content of the principle through its rulings, deriving from it such principles as citizens’ trust in law, trust in the state, protection of acquired rights, *lex retro non agit*, and the right to a court.¹⁹

In introducing the clause of a rule-of-law state into the Polish legal order, the Polish constitution-maker drew on the German concept of the *Rechtsstaat*.²⁰ This concept had been present in German political and legal thought for 150 years before it received a constitutional basis in the Basic Law of the Federal Republic of Germany of 23 May 1949. German legal scholars regard Arts. 20(1) and 28(1), first sentence, of the Basic Law as the legal foundation of the *Rechtsstaat*. Over time, this principle became firmly embedded as one of the fundamental principles of the Federal Republic of Germany’s free and democratic constitutional order.²¹

The idea of *Rechtsstaat* has consistently focused on limiting state arbitrariness and protecting individuals through appropriate legal procedures, ensuring at least a minimum level of rights and legal certainty – such as the predictability of the law. The concept also safeguards the constitutional system by upholding principles such as the supremacy of the constitution, the direct binding force of certain provisions, the unamendability of fundamental rights and constitutional principles, and judicial constitutional review. Furthermore, it provides for the right to resistance and the

15 Mołdawa, 1993, p. 75.; Kubiak, 1991, p. 16.

16 Morawska, 2003, p. 16.

17 Banaszak, 2012.

18 Wronkowska, 1995, p. 63.

19 Mołdawa, 1993, p. 78.

20 More on the source of the concept of *Rechtsstaat*, see Morawska, 2003, p. 9.

21 Art. 28(1), first sentence, states that ‘the constitutional order in the Länder must conform to the principles of a republican, democratic and social state governed by the rule of law within the meaning of this Basic Law’; Morawska, 2003, pp. 11, 59.

possibility of restricting the rights of individuals and organisations that violate or endanger the constitutional order.²²

What served as a significant reference point for the Polish constitution-maker was the definition of a rule-of-law state developed in German scholarship, particularly by Klaus Stern. The post-war development of West German statehood demonstrated that the concept of *Rechtsstaat*, as constitutionalised in the Basic Law and elaborated by the Federal Constitutional Court, provided a model that stood in contrast to totalitarian regimes and the systems prevalent in Eastern Bloc states.²³ This explains the popularity of the *Rechtsstaat* concept among European states which, following dictatorial rule in the 1970s, transitioned to democracy and linked the *Rechtsstaat* with principles and values such as democracy, political pluralism, equality, justice, freedom, and above all human rights. European socialist states that dismantled totalitarian regimes soon followed suit.²⁴

2.2. The Rule-of-Law Clause Under the Small Constitution of 1992

Subsequent amendments to the Constitution of the People's Republic of Poland²⁵ clearly showed that the document, following numerous changes and its incompatibility with emerging socio-political realities, had lost its regulatory capacity and failed to address the needs arising from systemic transformation. Therefore, in 1992, a new act was enacted – the Constitutional Act of 17 October,²⁶ commonly referred to as the Small Constitution. This act formally abolished the Constitution of 22 July 1952, as amended. However, certain chapters of the 1952 Constitution remained in force, particularly Chapter One, 'The Foundations of the Political and Economic System' containing the fundamental principles upon which the new system would

22 Wyrzykowski, 1998, pp. 66–68.

23 Morawska, 2003, p. 13.

24 Cf. the preamble to, and Art. 1 of, the Constitution of Spain and Art. 2 of the Constitution of Portugal. The states which in the 1970s, after the period of dictatorship, entered the circle of democratic states as part of restoring democracy and the rule of law introduced to their newly enacted constitutions the principle of the rule of law. Hungary also did that – it was the first state in Central Europe to introduce the rule-of-law clause to the legal order, Poland was the second state to do so, in enacting the December Amendment. More on that: Morawska, 2003, pp. 13–14; Kubiak, 1991, p. 16 and Wyrzykowski, 1998 pp. 65–66.

25 After the December Amendment, the subsequent amendments followed, in 1990 there were three of them: of 8 March (departure from the system of national councils, which represented state authority and served as organs of local self-government, introduction of the principle of territorial government as the basic form of organisation of public life in a commune), of 11 April (amendment of that of 8 March, the foundation for the restructuring of local administration), of 27 September (direct election of the President); two amendments in 1991 referring to parliamentary elections and the right to asylum; in 1992 – abolishment of honorary titles vested by the President; introduction of the National Broadcasting Council. More on that: Kruk, 1998, pp. 59–60.

26 The full name: The Constitutional Act of 17 October 1992 on the mutual relations between the legislature and executive of the Republic of Poland and on the territorial government, Journal of Laws of 1992 No. 84 item 426.

be built, including the provision concerning the rule-of-law state as envisaged in Art. 1 in its 1992 form.²⁷ During the period in which the Small Constitution remained in force, constitutional matters were not codified within a single act named ‘Constitution’ but were instead dispersed across several legal instruments of varying form.²⁸

Notably, the enactment of the Small Constitution represented a break – achieved through evolution and within the framework of the prevailing constitutional order – with the constitutional continuity of the previous system. This shift occurred because the legal foundations of the state’s system now rested solely on provisions enacted or explicitly retained by decision of the Parliament of the Third Republic.²⁹

2.3. The drafting of Art. 2 of the 1997 Constitution

The clause of a democratic rule-of-law state remained operative under constitutional statutes until 1997, when the current Constitution of 2 April 1997 came into force. The rule-of-law clause was incorporated into the new Constitution with wording identical to that of Art. 1 of the Constitution of the People’s Republic of Poland.³⁰ It is now found in Art. 2 of the current Constitution, which assigns to it new contents and functions. The entry into force of the new Constitution marked the end of the transitional period and the beginning of a new chapter in Polish constitutional law. The principle became the foundation of a new democratic system of values and aligned Poland’s constitutional framework with the principles of Western constitutionalism.³¹

The Constitutional Commission of the National Assembly (*Komisja Konstytucyjna Zgromadzenia Narodowego*, KKZN) oversaw the drafting of the 1997 Constitution. There was consensus on including the principle of the rule of law in the new Constitution. It was noted that the clause of a democratic rule-of-law state featured in many new constitutions of post-communist states and served to define the socio-political character of the state.³² However, debates arose regarding whether the second part

27 Kruk, 1998, p. 62.

28 The Constitution of Poland in 1992-1997 was composed of the following acts: the Constitutional Act of 17 October 1992 on the mutual relations between the legislature and executive of the Republic of Poland and on the local government, as amended; the provisions of the Constitution of 1952 retained in force on the basis of Art. 77 of the Constitutional Act of 17 October 1992, which at the same time repealed that Constitution; the Constitutional Act of 23 April 1993 on the mode of preparation and enactment of the Constitution of the Republic of Poland, as amended. More on that Kruk, 1998, p. 63.

29 More on the content of the Small Constitution: Kruk, 1998, pp. 60–61; Mołdawa, 1993, pp. 86–92.

30 Tuleja, 2016. Its inclusion within the text of the new constitution was obvious to everyone. Out of the constitutional drafts lodged with the KKZN, only two – authorised by the Senate and the Confederation of Independent Poland did not contain the rule-of-law clause. See: Biuletyn KKZN No. VIII, p. 53.

31 See: Morawska, 2003, pp. 18, 339.

32 Biuletyn KKZN, No. VIII, p. 51.

of Art. 2 should be retained and, if so, what its precise content should be – whether the Republic of Poland should be described as a state implementing the principles of social justice, a state of social justice (*państwo sprawiedliwości społecznej*), a social state (*państwo społeczne*) or a societal state (*państwo socjalne*).³³

The discussions also addressed whether the terms ‘democratic state’ and ‘rule-of-law state’ should appear together in a single provision.³⁴ Various formulations of the article were proposed, such as

the Republic of Poland is a republican democratic rule-of-law state, the Republic of Poland is a republican, democratic rule-of-law state implementing the principles of social justice, as well as the Republic of Poland is a democratic rule-of-law state implementing the principles of social justice, or also the Republic of Poland – the common good of all citizens – is a republican, democratic rule-of-law state, implementing the principles of social justice.³⁵

It was also noted that it would be worthwhile retaining the existing concept of the rule-of-law state, which had functioned in Polish constitutional law since 1989 and had become firmly established in constitutional jurisprudence.³⁶ Ultimately, the following version was adopted: ‘The Republic of Poland is a democratic rule-of-law state, implementing the principles of social justice’.

The CT interpreted the literal repetition of the provision containing the rule-of-law clause as the constitution-maker’s intention to retain the previous formulation and understanding of the clause, as developed in constitutional practice, particularly in jurisprudence between 1989 and 1997. The CT further stated that the clause should be understood in the same way as under the previous constitutional order, though it acknowledged that modifications could arise from specific provisions of the new Constitution or from the general context of its norms. However, unless such modifications are clearly demonstrated, it must be assumed that the previous interpretations and constructs related to the principle of a democratic rule-of-law state remain applicable.³⁷

During the Commission’s deliberations, a point of contention arose as to whether the principle of legality (i.e. the obligation of public authorities to act in accordance with the law) should be enshrined in a separate constitutional provision, given that legality is already encompassed within the rule-of-law principle.³⁸ It was observed,

33 Biuletyn KKZN, No. XI, pp. 115, 158–159, 198–199, 207.

34 Biuletyn KKZN, No. XII, p. 88.

35 Biuletyn KKZN, No. XIII, p. 7.

36 The discussion also concerned the issue whether to adopt the formula of a democratic rule-of-law state or a democratic state ruled by law. Eventually, it was recognised that the term rule-of-law state was more correct linguistically than a state ruled by law. See: Biuletyn KKZN, No. XIII, pp. 9–12, although it was noted that those terms do not differ and are treated equally even by the CT.

37 The judgment of the CT of 25 November 1997, K 26/97, OTK 1997, Nos. 5–6, item 64, p. 445.

38 Biuletyn KKZN, No. VIII, p. 55.

however, that the principle of legality had long featured in Polish constitutional provisions and had been well developed in the CT's jurisprudence. Omitting the principle could beg the question as to why the constitution-maker had deliberately excluded it, whereas explicitly including it would serve as a reminder to public authorities of their obligation to act within the bounds of the law. It was further suggested that the principle of legality represents a specific aspect of the rule-of-law state, and that comparative constitutional practice – for example, in Austria – supports the inclusion of both principles in separate provisions.³⁹

3. Defining the Principle of a Democratic Rule-of-Law State

3.1. Core Principles of a Rule-of-Law State

In the Polish legal system, the clause of a democratic rule-of-law state constitutes one of the foundational principles underpinning the state's legal and organisational framework. It is often referred to as a supreme principle of the Polish Constitution.⁴⁰ Scholarship emphasises that a rule-of-law state lacks a fixed legal or academic definition, and in constitutional theory, the clause is interpreted in different ways depending on which factors or features are highlighted. In jurisprudence, each court defines it with reference to the specific case at hand, inferring therefrom subsequent principles or elements of a rule-of-law state.⁴¹ Moreover, the content of the concept of a democratic rule-of-law state continues to evolve. It encompasses a set of values, either explicitly or implicitly articulated in the Constitution, which form an open and dynamic canon. The normative content of the principles comprising the rule-of-law state may also evolve over time.⁴² Although a precise definition of a democratic rule-of-law state should reflect the nature of the constitutional system and be grounded in the Constitution and jurisprudence, certain features are generally recognised as intrinsic. These include, *inter alia*, a democratic political system, legislation grounded in shared values, and the operation of state organs in accordance with the principle of legality. Each of these features incorporates specific principles that underpin the constitutions of contemporary democratic states.⁴³

The concept of a democratic rule-of-law state in the Polish Constitution draws upon the proposals advanced by Klaus Stern in his 1971 rectoral address. He outlined therein eight core principles of a rule-of-law state. First, the state and its authority

39 Biuletyn KKZN, No. VIII, pp. 66–68.

40 See: Seweryński, 2022, p. 11. More on the legal meaning of the clause of a rule-of-law state: Wrótkowska, 2006, p. 101.

41 Banaszak, 2012.

42 Tuleja, 2016.

43 Seweryński, 2022, p. 11.

must be founded on the constitution as the highest-ranking legal instrument. Second, relationships between the state and its citizens is governed by fundamental rights – specifically, human and civil rights, which primarily ensure individual liberty. Third, state authority is not concentrated in a single institution but is functionally divided – typically among the legislature, executive, and judiciary. Fourth, the constitution and laws set the boundaries for all state actions: legislation defines the limits for the legislature, while administrative actions and judicial decisions are constrained by statutes and regulations. Fifth, all individuals are equal before the law, with equality serving as a link between the rule-of-law and democracy. In accordance with the sixth principle, extensive legal protection is provided by independent courts, operating under statutorily regulated procedures, including oversight of legislative actions. In such a state, there is a framework for holding public authorities accountable, including criminal and civil liability for harm caused to individuals or for infringements on their rights. The concept also includes operational principles for public authorities, as clarified by the Federal Constitutional Court of Germany, such as proportionality and the predictability of state intervention.⁴⁴

3.2. The Building Blocks of a Democratic Rule-of-Law State

Polish constitutional scholarship identifies several components of a rule-of-law state: the sovereignty of the nation; democratic mechanisms for legitimising power; separation of powers; a hierarchical legal system in which the constitution and statutes hold a privileged position and serve as the basis for the functioning of state organs, especially with regard to citizens; judicial independence; robust systems for monitoring legal compliance by state authorities, particularly through constitutional adjudication; guarantees of citizens' rights and freedoms; and legislative principles such as the protection of citizens' trust in the law.⁴⁵

A rule-of-law state requires a formal constitution – a legal document that provides the normative basis for the exercise of state power. This document holds primacy over other legal norms and prevails in the event of a collision with other norms. The constitution forms the foundation for the state's entire legal system, outlines the essential principles of the constitutional order, defines the entity vested with authority, and prescribes the mechanisms through which that authority is exercised. It also regulates citizens' rights, freedoms, and obligations, as well as the structure and organisation of public administration. Moreover, it defines the individual's position in the state, particularly in relation to the implementation of the principle of national sovereignty. The constitution is binding on all state authorities.⁴⁶

44 Professor Dr. Klaus Stern, speech delivered by him as a rector, pp. 7–8, see: Stern, 1971; Zmierczak, 1992, pp. 41–52.

45 Wronkowska, 1995, p. 76.

46 Wyrzykowski, 1998, p. 70.

The principle of constitutional supremacy in the Polish legal order derives from Art. 8 of the Constitution. In negative terms, this means that no subordinate legal norm may conflict with the Constitution, either substantively or procedurally. In positive terms, all state organs are obliged to enforce and adhere to constitutional norms. The CT serves as the guardian of the Constitution.⁴⁷

The Constitution defines the fundamental legal order, guarantees its coherence – especially in axiological terms – and serves as the foundational norm for the entire legal system. It is the highest-ranking legal source in the state.⁴⁸

The next component of the clause of a democratic rule-of-law state is the principle of the hierarchy of sources of law. It stipulates that each legal enactment holds a specific position within the hierarchy of legal sources, and that lower-ranking enactments must conform to those of higher rank. In such a hierarchically organised system, the relative status and interrelations of legal acts can be clearly identified. This principle ensures the internal coherence of the legal system.⁴⁹ In a rule-of-law state, international legal norms are also respected within this hierarchical structure.⁵⁰

In a rule-of-law state, law is superior to the state and serves as a framework for the functioning of both the state and society. This is reflected in the principle of legality (*legalność*, *legalizm* or *praworządność*), set out in Art. 7 of the Constitution, which builds upon Art. 2.

The principle of legality has two aspects: the first concerns the assumption and succession of power, while the second relates to the legal basis for the functioning of state organs. According to the former, the acquisition and transfer of power must be based on established legal rules. Power in a rule-of-law state must have normative legitimacy, although other forms of legitimacy may be acknowledged. What is impermissible, however, is the seizure of power through revolutionary means. With respect to the latter, the principle of legality requires that state organs act only within the limits permitted by law. Every act must have a legal basis and must not violate any other legal provisions.⁵¹

In a law-governed state, public authorities may be established only by law.⁵² Legal norms define their competences, responsibilities, and operational procedures, as well as the limits of their activity. Public authorities may act only where

47 In accordance with Art. 8(1) of the Constitution, the Constitution has the supreme legal force: ‘The Constitution shall be the supreme law of the Republic of Poland’, and links the highest rank of the norms contained in the Constitution with the principle of their direct application, which is envisaged in Art. 8(2). More on that: Wyrzykowski, 1998, p. 70; Muszyński, 2024, pp. 30–32; Syryt, 2019, pp. 35–43.

48 Cf. Wronkowska, 1995, p. 71; Banaszak, 2012; Skrzydło, 2004, pp. 25–26.

49 Sokolewicz, 2016.

50 Wronkowska, 1995, p. 71; Muszyński, 2024, pp. 5–48.

51 Wronkowska, 1995, pp. 67–68.

52 The legislative power is bound by constitutional norms, the executive and judicial powers are bound by statutes. All organs are also bound by non-state law, which the state committed to observing. Banaszak, 2012.

authorised by law, and only within the scope so authorised. Citizens have the right to demand that a legal basis be cited for any action taken by a public organ. This legal framework applies to all branches of public authority and is intended to protect individuals from arbitrary state interference and the abuse of power. It also guards against the instrumentalisation of law according to the political group in power. The subordination of public authority to law symbolises the freedom of citizens, understood as protection from illegitimate and unforeseeable interference in their lives.⁵³

In a rule-of-law state, law operates within a coherent system and is enacted through democratic procedures. It also reflects a universally recognised axiological system, with human dignity and freedom at its core.⁵⁴

A rule-of-law state also has an extensive system of specialised institutions, tasked with ensuring that all actors comply with the law and with restoring legal order where necessary – especially in relations between the state and the individual. In Poland, these responsibilities are assigned to the CT, the Commissioner for Human Rights, the Supreme Administrative Court (SAC), and independent courts.⁵⁵

Another key element of a rule-of-law state is the principle of the separation of powers, which governs the relationships among state organs. This principle rejects the concentration of power in a single entity and prevents any one branch from dominating the others – a situation that could lead to abuses and dysfunctions in public life. It safeguards against antidemocratic governance and promotes respect for civil rights and freedoms.⁵⁶ It also ensures that state organs function effectively, divide responsibilities rationally, and collaborate appropriately. A crucial aspect of this principle is the clear delineation of the tasks and competences of each organ, which facilitates accountability and enables individuals to enforce their rights before the court.⁵⁷

What is essential in a rule-of-law state is not merely the division of functions among the legislative, executive, and judicial powers, but the presence of a mutual system of checks and balances. Power is divided so that it can be constrained – thus guaranteeing the freedom of the individual. The Preamble to the Constitution expressly affirms the obligation of the powers to cooperate.

This principle is envisaged in Art. 10(1) of the Constitution. It vests legislative power in the Sejm and the Senate, executive power in the President and the Council of Ministers, and judicial power in the courts and tribunals. These organs, acting on behalf of the Nation, are responsible for legislating, governing, and administering

53 Wronkowska, 1995, p. 70.

54 Wronkowska, 1995, p. 70.

55 Skrzydło, 2004, p. 110.

56 Wyrzykowski, 1998, p. 78.

57 Wronkowska, 1995, pp. 69–70.

justice. Each branch influences the functioning of the others, as complete separation is impossible.⁵⁸

A rule-of-law state is characterised by the sovereignty of the nation, which underpins the democratic legitimisation of state authorities and the democratic process of lawmaking, as well as the establishment of institutions responsible for holding state organs accountable.⁵⁹ A further essential element is the existence of a democratically elected parliament that exercises legislative authority on behalf of the people. Only the parliament, as the representative of the sovereign – namely the people or the Nation – may enact statutes, which constitute the highest-ranking legal acts. This legitimacy accounts for the privileged position of statutes within the legal system. Historically, the enactment of law by an elected parliament was seen as ensuring its justness. Today, this requirement is instrumental: it increases the likelihood that legal norms will align with the axiological system accepted by society.⁶⁰ In the Polish legal order, this principle is enshrined in Art. 4.

In a rule-of-law state, law must satisfy specific requirements relating to its enactment, systemic structure, and normative content. Law must be enacted democratically – meaning that legislative action must derive from direct democratic legitimacy (as in the case of the constitution-maker or legislator) or indirect legitimacy, derived from their mandates. The democratic nature of law enactment also entails transparent legislative procedures and negotiated law-making processes. This means that the parties concerned reach agreement on the content of the legal norms that will govern them. A negotiated form of law-making implies that the recipients of legal norms participate in shaping their substance.⁶¹

The concept of a rule-of-law state also encompasses fundamental rights – namely dignity, freedom, and equality – which constitute its foundation. In such a state, the legal status of the individual must be determined primarily by constitutional norms. An effective mechanism must also exist to prevent violations of fundamental rights. To safeguard this sphere of liberty, the state must both refrain from undue interference and undertake positive measures to ensure freedom. Legislation plays a crucial role in this respect: it is the obligation of the legislature to enact legal norms that enable individuals to exercise their rights, protect them from infringements by others, and provide procedural guarantees allowing them to seek enforcement when those rights are violated. At the same time, legislators must avoid discretionary encroachment upon the sphere of individual rights.⁶²

Another feature of a rule-of-law state is legal certainty, which is ensured through principles guiding legislative activity – particularly with regard to individuals. These principles include the clarity and precision of law, the prohibition of excessive

58 More on the division of functions and on the mechanism of mutual balancing, see: Wyrzykowski, 1998, pp. 78–79.

59 Banaszak, 2012.

60 Wronkowska, 1995, pp. 65–70.

61 *Ibid.*, p. 70.

62 *Ibid.*, p. 72.

interference, the prohibition of retroactive legislation, and the principle of protecting trust.

The principle of protecting citizens' trust in the law entails the belief that all state organs will comply with the law in force. This obligation extends to the legislative bodies, which must observe procedural rules governing the form, content, and method of enacting legislation.⁶³ The principle is based on the trust that law constrains, separates, and rationalises state authority, and that it is capable of shielding individuals against abuse of power. It also requires the permanence and predictability of state decisions.⁶⁴ This principle applies to both the enactment and application of law – legislation and judicial rulings must not subject individuals to legal consequences that they could not have reasonably foreseen when making a decision or taking action.⁶⁵

Legal systems in rule-of-law states must also be accessible and clear. The system of norms should be structured in a way that allows individuals to readily obtain legal guidance. Citizens should be able to determine which substantive norms are in force, which authority is empowered to enact rules in a given area, in what form such rules are made, and where they are promulgated.⁶⁶

When legislators impose obligations on citizens, such obligations should be based on clearly defined prerequisites. These criteria enable individuals to anticipate the conduct of state organs and monitor them for arbitrariness. In the absence of such clarity, arbitrary decisions become more likely.⁶⁷

The activity of legislative and other state organs must also adhere to the principle of proportionality. Among available lawful measures, they should select those that are most effective in achieving objectives while imposing the least burden on affected individuals. If a measure must be dissuasive, it should be so only to the extent necessary to accomplish its intended purpose.⁶⁸

Decisions made by public authorities in a rule-of-law state must not be arbitrary or unpredictable: they must instead promote legal certainty and stability. This stability refers not to the permanence of individual legal provisions, but to the continuity of rights granted to individuals. The legislator must also respect acquired rights, uphold the prohibition of retroactive and generally retrospective – laws and mitigate any burdens arising from legislative amendments.⁶⁹

Departures from these principles may be justified only in exceptional circumstances, unforeseen by the legislature. In such cases, compensatory measures should be introduced to mitigate the resulting inconvenience.⁷⁰

63 *Ibid.*, p. 75.

64 Banaszak, 2012.

65 Wyrzykowski, 1998, p. 83.

66 Wronkowska, 1995, p. 74.

67 *Ibid.*, p. 74.

68 *Ibid.*, p. 74.

69 *Ibid.*, p. 75.

70 *Ibid.*, p. 75.

To guarantee the effective protection of individual rights, institutions must exist through which individuals may assert those rights. These include the right to a fair trial before an impartial court, the right to a defence during proceedings, and the right to have one's case resolved within a reasonable time.⁷¹

The historical development of the rule-of-law state concept allows a distinction between the formal and substantive models. In the formal sense, the rule-of-law state requires all subjects, especially state organs, to act in accordance with the law, as set out in Art. 7 of the Constitution.⁷² This provision mandates that the organisation, competence, and functioning of state organs must be grounded in statute. The consequence thereof is the adoption of the principle that a public authority is prohibited from acting unless expressly authorised by law. This imperative to abide by the law applies to both the enactment and application of legal norms, whereby the law itself determines the conditions of its creation, its binding force, and the circumstances under which it ceases to be binding.⁷³

The formal model is also based on the principles of constitutionalism, separation of powers, judicial independence, legality – especially in the sense that courts and the administration are bound by statutes – and the primacy of the statute. These principles imply that state interference in individual freedoms or property is permissible only on the basis of statutory authorisation. They also encompass the prohibition of retroactive laws, the existence of a robust legal framework for supervising compliance with the law by state organs, particularly the executive, and the liability of the state and its officials for unlawful actions. In this model, administrative courts play a central supervisory role.⁷⁴

Within the formal conception, law takes precedence over the state, its organs, and individuals. The state is governed by law – more precisely, by statute – and is thus a 'state of the statutes'. Statutes are regarded as the primary and sole source of law, which makes the entire legal system one of enacted norms. The ideal of a rule-of-law state can only be realised by adhering to statutes. It is the statute that confers rights and freedoms, delineates the boundaries of state authority, and regulates the scope and methods of governance, particularly in relation to the executive.⁷⁵ In this framework, the 'rule of law' – not the 'rule of the people' – is the authoritative principle. This means that state authorities are bound by laws they themselves enact, both in their legislative and administrative capacities.⁷⁶

However, adherence to these formal elements does not entail a requirement for the state to undertake a specific action. The purpose and essence of the formal model

71 Wyrzykowski, 1998, pp. 82–83.

72 Seweryński, 2022, p. 13.

73 More on that: Skrzydło, 2004, p. 109.

74 See Morawska, 2003, p. 64; Karp, 2004, p. 182. Cf. Skrzydło, 2004, p. 109.

75 See Morawska, 2003, p. 65.

76 Cf. Skrzydło, 2004, p. 109.

is to establish procedural and organisational constraints that limit the abuse of state power against individuals.⁷⁷

Nevertheless, a state that meets these technical legal requirements without respecting a higher normative order remains merely a formal rule-of-law state.

By contrast, the substantive model of the rule-of-law state requires that the content of law reflect certain moral ideals. Law must respect human rights and serve the principles of justice. State activity should be guided by values such as social justice and support for individuals in financial hardship. The ultimate aim is to guarantee and uphold human rights and freedoms, including those enshrined in the Constitution, as well as the equal treatment of all citizens.

The next value in such a state is democracy, which stipulates that legislative bodies and other supreme state organs are formed through universal elections. Substantive elements also include political pluralism,⁷⁸ the principle of local self-government, sovereignty, and the guarantee of public participation in decision-making, as well as an independent judiciary that oversees the legislature and the executive.

A substantive rule-of-law state, in this sense, is not the opposite of a formal one. Rather, the formal elements complement the requirements of substantive constitutional law – by making the abuse of public power against citizens more difficult, and by prohibiting such abuse through constitutional norms.⁷⁹

It is noted in scholarship that the concept of a rule-of-law state should not be examined by separating formal and substantive aspects, as a comprehensive analysis must consider both. Scholars also emphasise that privileging one dimension is rare and that it is essential to integrate formal and substantive elements to fully comprehend the essence of a rule-of-law state. These elements were brought together in response to totalitarian regimes, as avoiding substantive value judgments may result in recognising such regimes as rule-of-law states. Conversely, the development of substantive elements revealed the importance of grounding them in the values inherent in democratic governance.⁸⁰

3.3. The Democratic Character of the State

The principle of democracy is one of the core elements of a democratic rule-of-law state, as enshrined in Art. 2 of the Constitution. Etymologically, democracy denotes the rule of the people. Its objective is to enable the majority of citizens to influence public authorities and participate in state decision-making, while also shaping social reality according to their will. The democratic system thus protects the will of the majority, with respect for the voice of the minority. It embodies the ideals of freedom and justice, ensuring equality and access to political participation

77 Morawska, 2003, p. 64; Wyrzykowski, 1998, p. 67.

78 Banaszak, 2012.

79 Cf. Skrzydło, 2004, p. 110; Wyrzykowski, 1998, p. 69.

80 Banaszak, 2012.

and influence over social affairs.⁸¹ A democratic state is characterised by a political system in which the nation is the sovereign, and supreme authority rests with the people. The nation exercises this authority either directly or indirectly through its democratically elected representative.⁸²

The principle also encompasses the democratic process of law-making. This is visible in both parliamentary and non-parliamentary stages, which involve the participation of multiple stakeholders, including public consultations and hearings. Law, in this context, expresses the general will, shaped through procedures that include diverse social groups.

Describing the rule-of-law state as ‘democratic’ serves as an interpretative directive for clarifying the principles, rules, and values inferred from the rule-of-law clause. The term ‘democratic’ means that only institutions endowed with democratic legitimacy – directly or indirectly conferred by the people – may perform authoritative public functions. These institutions are obliged to act in the interest of the nation, as failure to do so may result in the loss of legitimacy.⁸³ Another feature of democracy is the constitutional structure based on the separation and mutual balance of powers: legislative, executive, and judicial. The legislative power is exercised by the parliament, elected in democratic elections. It operates democratically – in a manner open to the public – guarantees the participation of the opposition in deliberations, and adopts resolutions by a majority of votes. The executive power is exercised by the president, who is elected in universal elections, and by the government. The judicial power is exercised by courts and tribunals, where independent judges adjudicate. In a democratic state, public authorities are accountable and subject to oversight. The parliament is accountable to voters, and its statutes are subject to constitutional review by a constitutional court. The government is accountable to the parliament, and constitutional liability also applies.⁸⁴

Democracy also requires that the processes of enacting, interpreting and applying law follow rigorous democratic principles. The relationship between democracy and the rule-of-law state lies in the fact that law – the central category in such a state – must be informed by democratic values, from its creation and content to its interpretation and application. The purpose is to guarantee political pluralism, freedom to form political parties, representative democracy through elections, mechanisms of direct democracy such as referenda, and the role of various forms of social self-government, including local government.⁸⁵

81 Chmielewski, 2020, pp. 4–5.

82 Seweryński, 2022, p. 12.

83 See: Sarnecki, 2014, pp. 71–72.

84 Seweryński, 2022, p. 12.

85 Cf. Grochowski, pp. 140–149.

3.4. *Embedding Social Justice in the Rule-of-Law State*

Art. 2 of the Constitution also declares that the Republic of Poland is a state implementing the principles of social justice. This general clause⁸⁶ imposes certain legal obligations on the state. These include the incorporation of social justice standards into legislation, as well interpretative guidance for other legal provisions.⁸⁷ The term ‘principles of social justice’ guides the operation of state organs and other entities.⁸⁸

The concept of ‘justice’ in this context is inherently ambiguous and subject to change.⁸⁹ Aristotle distinguished between *justice sensu largo*, understood as encompassing all human virtues, and *justice sensu stricto*, which includes distributive and corrective (equalising) justice. According to this conception, equal situations should be treated equally. Within corrective justice, good must be repaid with good, and wrong with proportionate redress; in distributive justice, individuals sharing relevant characteristics should receive equal treatment in the distribution of goods or burdens.⁹⁰ In this sense, each individual ought to receive what he or she deserves, based on merit, effort, or ability.⁹¹

The adjective ‘social’ indicates that the constitutional principle in question pertains to relations among groups – that is, categories, classes, or strata of society – rather than relations among individuals, between individuals and groups, or between individuals and the state. Thus, the provision does not address subjective perceptions of justice, but rather justice as a social construct. From this perspective, the principle of justice informs the substance of other constitutional norms and imposes an obligation on the state to pursue economic policy aligned with the social interest, rather than merely protecting disadvantaged groups. It is therefore incumbent upon the legislature to ensure the implementation of social justice within economic development, through instruments which need not be legal in nature – such as subsidies or taxes.⁹² ‘The implementation of the principles of social justice’ is an imperative,

86 Karp, 2004, pp. 169–172.

87 The principle of social justice impacts the content of constitutional norms related to the rights and freedoms of the individual, in particular, this refers to the principle of equality. Equality should not be comprehended in a total manner as equality in every aspect, whereas such tendencies were present in the period of real socialism and were visible in the expansion of equality into the socio-economic sphere. See: Banaszak, 2012.

88 Ziemiński, 1996, p. 9.

89 *Ibid.*, p. 11. One of the general definitions of justice is the obligation to determine actions with regard to other subjects from the perspective of equality, which assumes balance between burdens and prizes as well as mutual gains. See Karp, 2004, pp. 36–38, 54–57.

90 Inequality may not arise in a relation between equal parties. For example, one should follow justice while examining two identical legal cases, as everyone must be equal before the law. More on the conceptions of justice, see Ziemiński, 1995, p. 13. More on the views of Aristotle, I. Kant or J. Rawls see: Karp, 2004, p. 69.

91 Chmielewski, 2020, p. 7.

92 Banaszak, 2012.

directed at the state, to properly shape legislative acts,⁹³ to ensure a baseline of justice within social structures, and to guarantee dignity, equality of rights, social solidarity, and a minimum level of social security or subsistence for those who are involuntarily unemployed.⁹⁴ This imperative entails an expectation that the state will create conditions that shield individuals from harm, although it does not confer specific enforceable claims by the aggrieved citizen against the state.

It is also widely accepted that social justice, in this context, refers to a form of justice that is socially institutionalised and relates to issues of general societal concern. It does not extend to questions of individual fairness in private matters, such as the outcome of an artistic competition.⁹⁵

Social justice also concerns the welfare of every member of society. It requires the introduction of incremental changes to the social, political, and economic life of the state that progressively bring society closer to the ideal of social justice.⁹⁶

The clause of a democratic rule-of-law state does not have a universally accepted meaning. It is generally understood as a set of values and principles. Polish legal scholarship widely recognises that the key elements of a rule-of-law state include, *inter alia*, democracy, legality, the hierarchical structure of legal sources, constitutionalism, judicial independence, the separation of powers, national sovereignty, citizens' rights and freedoms, elements of good legislation or social justice. These features are also reflected in the provisions of the Polish Constitution.

4. CT Jurisprudence on the Democratic Rule-of-Law State

The provision declaring the Republic of Poland to be a rule-of-law state is a general clause and a vague concept. In applying such clauses, the legislator acknowledges that their meaning may be specified through judicial practice. Accordingly, it is the constitutional adjudicating bodies that are authorised to define the content of the clause in the course of legal interpretation and application. The actual substance of the clause is therefore revealed only through the application of the law.⁹⁷ Thus, also considering the lack of a universal scholarly definition of the rule-of-law state, it is necessary to rely on the constitutional jurisprudence of the relevant country to interpret the concept.

93 Ziemiński, 1996, p. 56.

94 Tuleja, 2016. However, social justice is not an idea, which serves to guarantee welfare or happiness to every subject. Nor does it require that everyone at any moment of their life, possess equal fortune regardless of how much they work or that they be able to fulfil all their costly wishes. More on that: Karp, 2004, p. 65.

95 Ziemiński, 1996, p. 56.

96 Domańska, 2001, p. 57.

97 Morawska, 2003, p. 237.

The CT has contributed to the development of this concept since it was first introduced into the Polish legal order. Soon after the adoption of the December Amendment to the Constitution of the People's Republic of Poland, the CT began building its jurisprudence concerning former Art. 1 – a line of reasoning later continued under the new Constitution.

The current Constitution includes certain elements of a rule-of-law state that were not previously codified, but which the CT had derived from the rule-of-law clause – notably, human rights, fundamental freedoms, and systemic norms. The entry into force of the 1997 Constitution did not signal a rupture with previous the developments in the interpretation of the clause. Even where specific elements are now expressly provided for elsewhere in the Constitution, they remain within the scope of the rule-of-law clause. The CT itself acknowledged that Art. 2 continues to serve as a source of many principles not *expressis verbis* contained in the Constitution. In its judgment of 25 November 1997, the CT observed that the literal repetition of the former Art. 1 in the new Art. 2 should be regarded as a clear indication of the constitution-maker's intention to preserve the established interpretation of the democratic rule-of-law clause developed in constitutional practice, especially in the jurisprudence of the preceding eight years. It further held that the essential meaning of the principle under Art. 2 ought to be interpreted in continuity with its previous understandings, unless it is demonstrated that modifications have occurred. These may arise from particular provisions in the new Constitution or from the broader constitutional context. Absent such demonstration, the earlier interpretations and doctrinal constructions remain valid.⁹⁸

Above all, the CT defined the principle of a democratic rule-of-law state as a collection of 'diverse values, which are explicitly or implicitly expressed in the Constitution, and which refer to law, the state's system as well as relations between the state and individuals'.⁹⁹ It also emphasised that this set of values is inherently open-ended.¹⁰⁰ This Chapter now turns to the systemic principles that, according to the CT, are encompassed within the rule-of-law clause.

4.1. Systemic Principles Derived from the Rule-of-Law Clause

The clause encompasses several systemic principles: sovereignty, democracy, the separation of powers, legality, decentralisation, and political pluralism. In its judgment K 32/09 concerning the ratification of the Treaty of Lisbon, the CT held that sovereignty is expressed in the Constitution not only through the preamble but also through the very existence of the fundamental law and the declaration in Art. 2 that the Republic of Poland is a democratic rule-of-law state.¹⁰¹ According to the

⁹⁸ The judgment of the CT of 25 November 1997, K 26/97, OTK ZU No. 5-6/1997, item 64.

⁹⁹ *Ibid.*

¹⁰⁰ Węśławska-Misiurek, 2021, p. 19.

¹⁰¹ The judgment of the CT of 24 November 2010, K 32/09, OTK ZU No. 9/A/2010, item 108.

CT, the sovereignty and independence of the Republic affirm the Polish Nation's exclusive right to determine its own fate. The Constitution – and in particular its preamble and Art. 2 – constitutes the normative expression of this principle, which manifests in the inalienable powers of state organs that form part of the constitutional identity of the state.

Another systemic principle derived by the CT from Art. 2 is the principle of legality. In its judgment K 7/90, the CT affirmed that legality is embedded within the rule-of-law clause.¹⁰² Specifically, Art. 7 of the Constitution states that 'organs of public authority act on the basis of and within the limit of the law'. This provision, according to the CT, establishes one of the fundamental principles of a modern rule-of-law state. Legality, as a formal constraint on public authorities, is intrinsic to the concept of a democratic rule-of-law state and is often considered one of its essential components.¹⁰³ The CT clarified the detailed content of the aforementioned principle, which comprises the following elements: (1) the requirement that public organs possess legitimacy to undertake any authoritative action; (2) the prohibition against assuming the powers of other public authority organs; (3) the restriction on the legislator's arbitrariness in assigning powers to other entities; (4) the prohibition against interpretations that falsely treat actions, which *de facto*, transgress the powers of a given entity as the lawful exercise of those powers; and (5) the prohibition – unless expressly permitted by law – against public authority organs delegating their powers and tasks to another entity.¹⁰⁴

In the judgment K 14/92, the CT clarified that the constitutional principle of a rule-of-law state, as set out in Art. 1 of the Constitution and the principle of legality in Art. 3 of the [former] Constitution, entails a norm prohibiting state organs from enacting normative acts inconsistent with acts of a higher rank, as well as a norm requiring each organ to act exclusively within the limits of its powers conferred by law. Any violation of law by a state organ, including in the legislative process, constitutes a failure to fulfil the obligation to abide by legal norms.¹⁰⁵

The CT further emphasised that the principle of legality forms the foundation of state organs' operation. This means that each state organ may act only within the scope authorised by law and solely on the basis of legal provisions. Failure to comply with this obligation renders such actions unlawful.¹⁰⁶

The CT also observed that democratism, as an inherent element of a rule-of-law state, requires combining the formal and substantive dimensions of the rule-of-law state principle, as explicitly stated in the Polish fundamental law. Minimum content requirements for legislation enacted by the Polish legislator include, *inter*

102 See also *inter alia* the ruling of the CT of 24 October 1995, K 14/95, OTK No. 2/1995, item 12; the ruling of the CT of 23 October 1996, K 1/96, OTK No. 5/1996, item 38.

103 See the decision of the CT of 30 November 2023, K 16/20, OTK A/2023, item 99.

104 Cf. the decision of the CT of 30 November 2023, K 16/20, OTK-A 2023/99 and the jurisprudence cited therein.

105 The ruling of the CT of 19 October 1993, K 14/92, OTK No. 2/1993, item 35.

106 The resolution of the CT of 16 March 1994, W 8/93, OTK p. I/1994, item 18.

alia, adherence to the principle of democracy.¹⁰⁷ According to the CT, the principle of democratism, understood as a component of the rule-of-law state envisaged in Art. 2 of the Constitution, requires not only embedding law in democratic values but also basing the entire process of creating, interpreting and applying law on the rigours of democracy. Moreover, democratism demands that democratic institutions and procedures be designed and function in a manner consistent with the requirements of a rule-of-law state.

The CT noted, drawing on legal scholarship, that democracy is such a broad and ambiguous concept that it must be specified by reference to ‘parallel’ constitutional principles such as the sovereignty of the nation, the separation and balance of powers, political freedoms of the individual, political pluralism, civil society and free elections. Democratism as an inherent element of the principle of a democratic rule-of-law state, encompasses not only the obligation to guarantee the sovereign the ability to elect its representatives in democratic parliamentary elections and to safeguard political pluralism, but also the freedom for citizens to organise themselves from the bottom up. Moreover, the CT clarified, *inter alia*, that the substantive dimension of the principle of a democratic rule-of-law state requires law to reflect values aligned with the democratic character of the state. These include the freedom of association, allowing citizens wishing to combine their activities to choose freely the legal and organisational form best suited to their objectives.¹⁰⁸

The next principle inferred by the CT from the clause under discussion is the separation of powers.¹⁰⁹ The issue of separation of powers appeared in the CT’s jurisprudence even before it was codified in Art. 1 of the Small Constitution. According to the CT, a core component of the separation of powers is the judiciary’s ability to review acts undertaken by the other branches, including norms enacted by the legislature. This was articulated in ruling U 6/92,¹¹⁰ in which the CT held that in a democratic rule-of-law state based on the division of powers, it is unacceptable to enact legal norms that cannot be reviewed for conformity with the constitution through proceedings designed to eliminate existing inconsistencies. After the Small Constitution entered into force, the CT confirmed that the principle of separation was explicitly enshrined in Art. 1.

As the CT highlighted, in a democratic rule-of-law state founded on the separation of powers, enacting law is the domain of the legislative branch, which enjoys significant discretion in determining the content of law, subject to constitutional limits.¹¹¹

107 The judgment of the CT of 1 July 2012, K 8/10, OTK ZU No. 7/A/2012, item 78.

108 *Ibid.*

109 Cf. the ruling of the CT of 21 November 1994, K 6/94, OTK No. 2/1994, item 39; the ruling of the CT of 9 January 1996, K 18/95, OTK No. 1/1996, item 1.

110 The ruling of the CT of 19 June 1992, U 6/92, OTK No. 1/1992, item 13.

111 See the ruling of the CT of 20 November 1996, K 27/95, OTK No. 6/1996, item 50. Cf. also the ruling of the CT of 23 October 1996, K 1/96, OTK No. 5/1996, item 38; the ruling of the CT of 9 January 1996, K 18/95, OTK No. 1/1996, item 1.

The CT also examined the significance of Art. 2 of the Constitution in delineating the boundaries of permissible influence among the branches of state authority, for instance in the context of ‘freezing’ judges’ salaries. The CT highlighted that in a democratic rule-of-law state based on the separation of powers, it is impermissible for one branch – the judiciary – to be undermined by others, for example through measures affecting judges’ financial security, as this could create dependency on the other powers and erode judicial authority.¹¹²

Decentralisation is another principle extracted by the CT from the rule-of-law clause, discussed *inter alia* in the judgment K 1/96.¹¹³ The CT observed that the Republic of Poland guarantees local self-government participation in the exercise of power. This principle obliges the state to establish legal frameworks enabling local self-government to participate effectively in the exercise of state authority.

The CT further stressed that the principle of a democratic rule-of-law state, together with the requirement that the Republic of Poland be treated as a common good of all citizens, means that the tasks of central state administration must serve the fulfilment of social needs. The activities of local government administration, subordinate to the central authorities, undoubtedly serve the interests of local communities.¹¹⁴

In its jurisprudence, the CT also clarified the scope of decentralisation, arguing that it does not preclude excluding certain issues from the powers of local organs and delegating them to other state authorities; however, such exclusions should comply with the Constitution, be enacted by statute and respect the requirement of rationality. Decentralised organs are characterised by self-reliance – the right to act with relative independence within statutory limits – and independence, understood as freedom from interference by higher-level authorities. The boundaries of decentralisation may also depend on changes in state policy, the condition of the local economy and the need to adapt administration to the delivery of public services in line with the principle of subsidiarity. The underlying social and constitutional premise is to place the administrative apparatus responsible for fulfilling tasks as close to citizens as possible. However, this must be implemented with due consideration of the socio-economic circumstances affecting the changes.¹¹⁵

What is also connected with the clause of a democratic rule-of-law state is the principle of political pluralism. In the judgment Pp 1/99, the CT clarified the meaning of this principle, the foundation of which is ‘the freedom to establish political parties and their freedom to operate’. It further indicated that political pluralism is regarded as an inviolable systemic principle due to the significance and role of political parties in a democratic state. Its content is determined by other fundamental principles of the Republic’s constitutional system, in particular the

112 The judgment of the CT of 12 December 2012, K 1/12, OTK ZU No. 11/A/2012, item 134.

113 The ruling of the CT of 23 October 1996, K 1/96, OTK No. 5/1996, item 38.

114 The judgment of the CT of 6 June 2006, K 23/05, OTK ZU No. 6/A/2006, item 62.

115 The judgment of the CT of 18 July 2006, U 5/04, OTK ZU No. 7/A/2006, item 80.

principle of a democratic rule-of-law state (Art. 2), the principle of the Nation's supremacy (Art. 4) and the principle of legality (Art. 7). The CT emphasised that political parties are obliged to respect democratic principles both in their internal organisation and in their activities. It added that, under previous constitutional provisions, this obligation was inferred not only from the requirement to apply 'democratic methods', but also from 'the essence of the functioning of a democratic rule-of-law state'.¹¹⁶ The same ruling underlined that political parties constitute an indispensable element of a liberal democratic legal order. Moreover, it explained that

what follows from the fact that political parties are rooted both in the individual's freedom to realise his/her political aspirations in an organised form, as well as from the fact that these organised forms impact the state's policies, are general constitutional assumptions referring to the principles of the freedom to establish political parties and the freedom of political parties to operate, as well as the limitations acceptable in that regard.

4.2. The Rights and Freedoms of the Individual

The rights and freedoms of the individual arising from the principle of a rule-of-law state include the right to a court, the right to life, the right to privacy, the right to the protection of dignity, the individual's right to the protection of personal data, and the principle of proportionality. These principles are currently *expressis verbis* stated in the Constitution, whereas previously they were derived from the democratic rule-of-law state and supplemented the then incomplete constitutional catalogue. They are divided into two groups. The first includes measures for the protection of rights and freedoms, the most important being the right to a court. The second encompasses the substantive rights and freedoms of the individual, with the right to life as the foremost, followed by the rights to dignity and privacy.¹¹⁷

The constitutional provisions in force between 1990 and 1997 did not contain the right to life. Therefore, the CT inferred the principle of the legal protection of the *foetus*¹¹⁸ from the principle of a democratic rule-of-law state in the case K 26/96.¹¹⁹

According to the CT, the right to life is inherent and cannot be granted or abolished by the legislator. The inherent nature of this right does not depend on the legislator's will, and it cannot be derogated by a legislative act. The CT held that

116 The judgment of the CT of 8 March 2000, Pp 1/99, OTK No. 2/2000, item 58. See also the decision of the CT of 24 November 2010, Pp 1/08, OTK ZU No. 9/A/2010, item 115.

117 Morawska, 2003, pp. 271, 329.

118 The CT analysed the aforementioned right while examining the provisions in Art. 4a(1)(4) of the Act of 7 January 1993 on Family Planning, Human Foetus Protection and Conditions for Terminating Pregnancy, which allowed abortion if a pregnant woman found herself in difficult life conditions or in a difficult personal situation.

119 The ruling of the CT of 28 May 1997, K 26/96, OTK No. 2/1997, item 19.

life is the fundamental attribute of a human being; depriving an individual of life simultaneously annihilates the human being as a subject of rights and obligations.

If the content of the rule-of-law principle is understood as a collection of fundamental directives inferred from the essence of democratically enacted law, guaranteeing its minimum justice, then the first such directive must be respect for human life from its beginning. A democratic rule-of-law state regards the human being and the goods most precious to him/her as a supreme value. Life is such a good and must be constitutionally protected at every stage, including the prenatal phase. The prohibition against terminating pregnancy, referring also to the pregnant woman herself, is therefore justified by the recognition of the value of the life of a conceived human being.

To sum up, the right to life is based on the following assumptions: (1) human life is subject to protection from its beginning, (2) it constitutes the fundamental good of the human being, and (3) the protection of life may not vary depending on the stage of development.

In the judgment of 20 October 2020, K 1/20, the CT once again referred to Art. 2 in the context of protecting a conceived child. It held that the obligation of public authorities to protect human life is rooted in Art. 2, especially in the principle of a democratic rule-of-law state. The essence of such a state is that it is created by a community of people who are subjects of constitutional rights and freedoms. Each individual enjoys the same personal dignity, meaning it is impermissible to treat any individual as an object. Art. 30 of the Constitution expresses this idea normatively. The obligation to respect and protect human dignity, linked to its inherent and inalienable nature, entails recognition that the existence of an individual is an independent constitutional value. The human being is an aim in him/herself, not a means to an end. Consequently, the state must protect the central good inherent in every human being: life. This obligation is expressed in Art. 38 of the Constitution.¹²⁰

The clause of a democratic rule-of-law state is also the source of the right to a court. In the ruling K 8/91, the CT explained that the principle of citizens' access to a court, aimed at enabling them to protect their interests before an independent organ bound solely by the law in force, constitutes one of the fundamental assumptions of a democratic rule-of-law state.¹²¹

The CT identified three essential elements comprising the right to a court: (1) the right of access to a court, i.e. the right to initiate proceedings before an impartial and independent organ; (2) the right to a proper court procedure, complying with the requirements of a fair and public hearing; and (3) the right to a court ruling, i.e. the right to have a case determined in a legally effective manner by a court.¹²²

120 See the judgment of the CT of 20 October 2020, K 1/20, OTK A/2021, item 1.

121 See also the ruling of the CT of 27 June 1995, K 4/94, OTK No. 1/1995, item 16 and the ruling of the CT of 13 March 1996, K 11/95, OTK No. 2/1996, item 9.

122 More on the right to a court, see the judgment of the CT of 9 June 1998, K 28/97, OTK ZU No. 4/1998, item 50; the ruling of the CT of 7 January 1992, K 8/91, OTK No. 1/1992, item 5.

In the ruling K 4/94, the CT also recognised the right to a measure of appeal, i.e. the requirement of two-instance proceedings, as an essential element of the right to a court. Although the principle of two-instance proceedings does not follow directly from the Constitution, it is embedded in the model of the common judiciary and belongs to binding global standards of legality.¹²³ In the resolution W 14/94, the CT further linked the formal aspect of the right to a court (i.e. access to court proceedings) with the substantive aspect, understood as the ability to seek legally effective protection of rights before a court.¹²⁴ Moreover, it underlined that an essential element of the guarantee of independence is the irremovability and substantive independence of judges.¹²⁵

The current Constitution explicitly expresses the right to a court in Art. 45(1) and Art. 77(2). This right remains a foundation of a rule-of-law state.

The CT also held that the principle of proportionality, serving as a limitation clause, follows from the principle of a rule-of-law state.¹²⁶ In the ruling K 18/95, the CT clarified that the principle of proportionality, inferred from Art. 1 of the constitutional provisions, applies to statutory interferences in the sphere of individuals' rights and freedoms. It stated that the legislator may not introduce limitations that impose an excessive burden, particularly where such limitations disturb the balance between the burden on individual rights and the public interest being protected. This prohibition is one of the manifestations of the principle of protecting citizens' trust in the state. When analysing the constitutionality of statutory interference, three questions must be answered: (a) is a given regulation capable of achieving the intended result; (b) is it indispensable for the protection of the public interest with which it is linked; and (c) do its results remain proportionate to the burdens imposed on the citizen?¹²⁷ This is the so-called proportionality test.¹²⁸

In the ruling W 3/93, the CT discussed this principle in the context of limiting the freedom of speech. It clarified that statutory limitations may only be introduced within the necessary scope and must be treated as exceptions. Their existence must always follow from clearly formulated statutory provisions, and it is forbidden to rely on presumptions of such provisions. It also reserved that specific statutory limitations, or their cumulative effect, may not infringe the essence of a given right.¹²⁹

At present, it is emphasised that the principle of proportionality stems from two sources. When the subject of review concerns statutory regulations relating to the rights and freedoms of the individual, their limitation in the context of the principle of proportionality may be examined on the basis of Art. 31(3) of the Constitution.

123 More on that: Morawska, 2003, p. 274.

124 Ibid.

125 Ibid., p. 282.

126 See the judgment of the CT of 12 January 1999, P 2/98, OTK No. 1/1999, item 2; the judgment of the CT of 12 February 2014, K 23/10, OTK ZU No. 2/A/2014, item 10; Tuleja, 2016.

127 Cf. the ruling of the CT of 26 April 1995, K 11/94, OTK p. I/1995, item 12.

128 See also the judgment of the CT of 29 June 2001, K 23/00, OTK ZU No. 5/2001, item 124.

129 See the ruling of the CT of 19 June 1992, U 6/92, OTK No. 1/1992, item 13.

This Art. indeed enshrines the principle of proportionality. By contrast, for regulations unrelated to the sphere of individual rights and freedoms, the CT infers the principle of proportionality from the concept of a democratic rule-of-law state. This principle is not explicitly stated in Art. 2 of the Constitution but arises from the CT's interpretation of that Art.¹³⁰ The Tribunal further clarified that the principle of proportionality derived from Art. 31(3) of the Constitution applies to the assessment of interferences with certain constitutional rights and freedoms. Meanwhile, Art. 2 of the Constitution, understood rather as the principle of adequacy, refers to the formal manner in which the legislator exercises its freedom of regulation and is distinct from the assessment of interferences with specific individual rights. Only this distinction justifies deriving these principles from different constitutional provisions.¹³¹

The principle of the protection of human dignity was the first substantive element inferred from the principle of the rule-of-law, which occurred in 1992.¹³² In the case U 6/92,¹³³ the CT stated that human dignity is a personal good entitled to enhanced protection in a democratic rule-of-law state. At that time, however, the CT equated human dignity with the right to the protection of honour and good name, i.e. a specific human right. It did not yet recognise dignity as an inalienable and inviolable source of human and civil freedoms and rights, as the current Constitution does.¹³⁴ Nevertheless, it classified dignity as a personal good, thereby invoking the doctrine of civil law, and did not accord it the status of a constitutional value capable of shaping the axiology of constitutional solutions.¹³⁵ The CT held that all interferences by a state organ with human dignity and other personal goods must be grounded exclusively in statutory authorisation. This requirement, rooted in the principle of a democratic rule-of-law state, is absolute.

It also stated that any norm limiting citizens' rights established by an act of a lower rank than a statute breaches Art. 1 of the (former) Constitution. Moreover, it stressed that statutory interference with human dignity must meet the requirement of sufficient precision, meaning that the permissible scope of interference must be clearly defined and the manner in which a person whose rights and freedoms have been limited may defend him/herself from unjustified infringement of personal goods must be determined.¹³⁶

In the case W 16/92,¹³⁷ the CT addressed dignity in the context of participation in a medical experiment without the participant's personal consent and held that this violated the clause of a rule-of-law state through the infringement

130 See Banaszak, 2012. See also Syryt, 2022, pp. 367–378.

131 See the judgment of the CT of 4 July 2019, K 16/17, OTK A/2019, item 49.

132 Morawska, 2003, p. 353.

133 The ruling of the CT of 19 June 1992, U 6/92, OTK No. 1/1992, item 13.

134 Morawska, 2003, p. 354.

135 *Ibid.*, p. 355.

136 See the ruling of the CT of 19 June 1992, U 6/92, OTK No. 1/1992, item 13.

137 The resolution of the CT of 17 March 1993, W 16/92, OTK No. 1/1993, item 16.

of human dignity.¹³⁸ In turn, in the case P 7/92,¹³⁹ the CT assigned certain elements clarifying the content of the imprecise concept of dignity. The case concerned the aspect of dignity in the context of unemployment. In its reasoning, it stressed that the state is obliged, within the sphere of social activity, to guarantee an unemployed individual conditions enabling him/her to exercise the right to existence and freedom arising from inalienable, inherent human dignity.

In the case K 21/96,¹⁴⁰ the CT derived from the clause of a democratic rule-of-law state the constitutional right to privacy, understood *inter alia* as the right to keep secret information about one's private life. At the time, the constitutional provisions then in force did not expressly provide for such a right. The CT defined privacy as encompassing principles and rules relating to various spheres of the individual's life, whose common denominator is the individual's right to live his/her life according to his/her own will, with any external interference restricted to the necessary minimum. It also noted that this right was not absolute and could be subject to limitations, which had to be formulated in conformity with constitutional requirements.

4.3. Principles of Good Legislation

The clause of a democratic rule-of-law state is also the source of principles concerning good legislation.¹⁴¹ The CT expressed the view that it is the parliament's task to select the best legislative solutions and that it enjoys relative freedom to enact laws serving political and economic objectives. However, the legislator must respect the procedural aspects of a democratic rule-of-law state. It is not the CT's role to review the purposefulness or appropriateness of the adopted solutions, as the parliament is accountable for these before the electorate. The CT's role is to examine whether parliament has violated the norms, principles, and values laid down in the Constitution.¹⁴² Among the principles that may be enumerated are the principle of protecting the individual's trust in the state and its laws (principle of loyalty), the principle of legal certainty (stable and secure law), the requirement for precise legal provisions (principle of unambiguous law), the principle of protecting acquired rights, and the principles *lex retro non agit* and *vacatio legis*. These principles set the formal framework for the legislator's discretion and guarantee that a public authority may not express its will in an entirely unrestricted manner.¹⁴³

The CT highlighted that the principle of loyalty is an inherent feature of a rule-of-law state because a democratic rule-of-law state is one in which trust in the state and its laws is protected. This principle is rooted in legal certainty and security,

138 See the ruling of the CT of 19 June 1992, U 6/92, OTK No. 1/1992, item 13.

139 The ruling of the CT of 13 July 1993, P 7/92, OTK No. 2/1993, item 27.

140 The ruling of the CT of 24 June 1997, K 21/96, ZU OTK No. 2/1997, item 11.

141 Zaleśny, 2000, p. 12.

142 The judgment of 17 May 2005, P 6/04, OTK ZU No. 5/A/2005, item 50. Cf. Zaleśny, 2009, p. 13.

143 Zaleśny, 2009, p. 47.

and above all it entails the need to protect and respect acquired rights and on-going interests, especially the proper exercise of rights obtained under previous provisions.¹⁴⁴

The principle of protecting trust in the state and its laws¹⁴⁵ is based on the assumption that public authorities should act in a loyal and fair manner towards the individual, providing a sense of legal stability and security.¹⁴⁶ It also presumes that the law should not operate as a ‘trap’ for citizens, who should be able to organise their lives with confidence that they will not incur unforeseen negative legal consequences of their decisions and actions.¹⁴⁷ Legal security further requires that individuals be able to determine their conduct based on full knowledge of the prerequisites for state action, to familiarise themselves with these prerequisites, and to understand the legal consequences that may follow from their conduct.¹⁴⁸ The individual’s legal security, which is linked to legal certainty, enables the prediction of state actions and facilitates the planning of one’s own actions.¹⁴⁹ Therefore, legal certainty should be understood as the assurance that an individual may organise his/her life on the basis of the law in force rather than as mere stability of legal provisions.¹⁵⁰

Moreover, the principle of the protection of citizens’ trust in the state reflects the prohibition against excessive interference with the sphere of individual rights and freedoms. As a rule, the legislator, when enacting laws, should not limit individual freedoms. Such a limitation is acceptable only if required by an important social or individual interest protected under the Constitution. The legislator should not enact laws that limit the catalogue of constitutional rights or restrict the exercise of those

144 Cf. the judgment of the CT of 24 October 2000, SK 7/00, OTK No. 7/2000, item 256 and the judgment of the CT of 25 November 1997, K 26/97, OTK nos. 5–6/1997, item 64.

145 The principle of the protection of trust was present in the jurisprudence of the CT as early as 1988, that is, before the entry into force of the December Amendment. The CT derived it then from some provisions of the Constitution of the Republic of Poland (Arts. 9, 20(2), 101). This principle was not explicitly envisaged in the December Amendment and in the Small Constitution. The CT recognised that it followed from the principle of the rule-of-law state and the principle of the legality of operation of organs of state and local-government administration (the ruling of the CT of 23 October 1990, U 1/90, OTK No. 1/1990, item 9; the ruling of the CT of 15 December 1992, K 6/92, OTK No. 2/1992, item 27). In later judgments, the CT derived the said principle only from the principle of the rule-of-law state. This stance has become solidified in the jurisprudential practice of the CT, which held that in a rule-of-law state relations between the state and citizens should be based on trust and the state’s loyalty vis-à-vis citizens.

146 See inter alia the judgment of the CT of 8 December 1992, K 3/92, OTK ZU 1992, item 26. More on that Tuleja, 2016.

147 See inter alia the judgment of the CT of 25 April 2001, K 13/01, OTK No. 4/2001, item 81; the judgment of the CT of 7 February 2006, SK 45/04, OTK ZU No. 2/A/2006, item 15; the judgment of the CT of 15 July 2013, K 7/12, OTK No. 6/A/2013, item 76.

148 See inter alia the judgment of the CT of 14 June 2000, P 3/00, OTK No. 5/2000, item 138; the judgment of the CT of 2 April 2007, SK 19/06, OTK ZU No. 4/A/2007, item 15; the judgment of the CT of 20 January 2009, P 40/07, OTK ZU No. 1/A/2009, item 4.

149 See inter alia the judgment of the CT of 14 June 2000, P 3/00, OTK No. 5/2000, item 138.

150 See e.g. the judgment of the CT of 13 November 2013, K 2/12, OTK ZU No. 10/A/2012, item 12.

rights.¹⁵¹ This principle is also linked to the requirement to establish an appropriate *vacatio legis* period when amendments to existing law worsen the legal situation of an individual.¹⁵²

Additionally, the principle of trust in the state and its laws is connected with the permanence and finality of individual determinations delivered on the basis of legal provisions, which themselves should be formulated precisely and clearly. The legislator is obliged to enact laws that are coherent, clear and understandable to citizens.¹⁵³ The principle under discussion embraces the stability¹⁵⁴ and public accessibility of law. The CT has emphasised that, in particular, provisions referring to individual rights and freedoms should be formulated in a correct, clear and precise manner.¹⁵⁵ The requirement of legal stability focuses on the prohibition against temporary statutes and against 'surprising' the addressees of legal norms by changes, namely, enacting law without appropriate *vacatio legis*.¹⁵⁶ Clarity, in turn, entails the obligation to create provisions that are understandable to addressees, who are entitled to expect a rational legislator to enact legal norms free from ambiguity regarding the content of imposed obligations and vested rights. Precision is closely related to clarity and manifests itself in the certainty of those obligations and rights, enabling their effective enforcement.¹⁵⁷

This principle also entails the prohibition against the creation of apparent rights, meaning situations where specific legal regulations are illusory. The legislator may not create normative constructions that are impossible to implement, that merely create the illusion of a right, and that, consequently protect individual interests only superficially. In principle, the legislator should not significantly limit the exercise of an individual right formally assigned to the individual, as this would result in a *nudum ius* – a right devoid of practical effect.¹⁵⁸

An unclear or imprecise provision leaves addressees uncertain about the scope of their rights and obligations and grants organs applying it excessive discretion, effectively allowing them to replace the legislator in deciding matters regulated ambiguously. According to the CT, the legislator may not, by drafting imprecise provisions, provide implementing organs with undue freedom to determine, in practice, the *ratione materiae* and *ratione personae* scope of limitations on constitutional rights and freedoms of the individual. This assumption is referred to as the principle of the precision of statutory interference in the sphere of constitutional rights and freedoms.

151 See the ruling of the CT of 26 April 1995, K 11/94, OTK No. 1/1995, item 12.

152 See e.g. the judgment of the CT of 24 May 1994, K 1/94, OTK No. 1/1994, item 10; the judgment of the CT of 4 January 2000, K 18/99, OTK No. 1/2000, item 1.

153 See the ruling of the CT of 26 April 1995, K 11/94, OTK No. 1/1995, item 12.

154 See the ruling of the CT of 8 November 1989, K 7/89, OTK No. 1/1989, item 8.

155 The judgment of the CT of 21 March 2001, K 24/00 OTK No. 3/2001, item 51.

156 See inter alia the ruling of the CT of 2 March 1993, K 9/92, OTK No. 1/1993, item 6; the ruling of the CT of 15 July 1996, K 5/96, OTK No. 4/1996, item 30.

157 See the judgment of the CT of 23 October 2007, P 28/07, OTK ZU No. 9/A/2007, item 106.

158 See e.g. the judgment of the CT of 8 January 2013, K 18/10, OTK ZU No. 1/A/2013, item 2 and the judgment of the CT of 10 January 2012, P 19/10, OTK ZU No. 1/A/2012, item 2.

Exceeding a certain threshold of imprecision in legal provisions may justify declaring their non-conformity with the principle of the rule of law.¹⁵⁹

The principle of the protection of citizens' trust in the state and its laws is not absolute, and legislative practice may permit exceptions. Yet such departures must be justified. The legislator may sacrifice the value of respect for this principle only to protect a more important constitutional value. The limit of the legislator's obligation to respect the principle of trust is defined by the presence of an important social or individual interest protected under the Constitution.¹⁶⁰

The precision of legal provisions is also linked to the principles of good legislation inferred by the CT from the clause of a rule-of-law state. It constitutes an element of the principle of the protection of citizens' trust in the state and its laws and is closely connected with the principles of legal certainty and security. The requirement of precision applies to all regulations directly or indirectly defining the legal position of the citizen.¹⁶¹ In accordance with this principle, the legislator is obliged to enact provisions as precise as possible in a given case, both in content and in form. Both dimensions of law are defined by three criteria: the precision of the regulation, the clarity of the provision and its legislative correctness.¹⁶²

Three assumptions are crucial in assessing whether a given provision complies with the requirements of good legislation: (1) each provision limiting constitutional freedoms or rights should be formulated in a manner allowing to unequivocally establish who is subject to the limitation and under what circumstances; (2) the provision should be sufficiently precise to ensure uniform interpretation and application; and (3) it should be formulated so that its scope of application extends only to situations where a rational legislator genuinely intended to introduce a regulation limiting the exercise of constitutional freedoms and rights.¹⁶³ Moreover, provisions should comply with the requirements of good legislation set out in the 'principles of legislative technique'. These requirements, while secondary to the first two criteria, serve to ensure that legal norms are expressed with sufficient precision and clarity.¹⁶⁴

The CT also derived from the principle of the rule-of-law state the principle of the protection of acquired rights, which is connected with the principle of trust in relations between the citizen and the state.¹⁶⁵ To assess whether a limitation on acquired rights is acceptable, the following factors must be considered: (1) whether

159 See the judgment of the CT of 22 May 2002, K 6/02, OTK ZU No. 3/A/2002, item 33.

160 See e.g. the judgment of the CT of 24 May 1994, K 1/94, OTK No. 1/1994, item 10.

161 Ibid.

162 See e.g. the judgment of the CT of 21 March 2001, K 24/00, OTK 2001, No. 3, item 51.

163 More on that: Tuleja, 2016; see inter alia the judgment of the CT of 22 May 2002, K 6/02, OTK ZU No. 3/A/2002, item 33 and the judgment of the CT of 30 October 2001, K 33/00, OTK ZU No. 7/2001, item 217.

164 See the judgment of the CT of 28 October 2009, Kp 3/09.

165 See the ruling of the CT of 22 August 1990, K 7/90, OTK ZU No. 1/1990, item 5. Cf. the judgment of the CT of 15 February 2005, K 48/04, OTK ZU No. 2/A/2005, item 15.

other norms, principles or constitutional values justify the limitation; (2) whether the norm, principle or value can be implemented without infringing acquired rights; (3) whether, in a specific situation, constitutional values should take precedence over those underlying the principle of acquired rights; and (4) whether the legislator has undertaken necessary measures to allow individuals to adapt to the new regulation.¹⁶⁶

However, the CT noted that protecting acquired rights does not mean that every amendment unfavourable to a certain group of citizens is prohibited. Nor is it prohibited to regulate existing rights differently if the changes lead to solutions that better reflect constitutional principles from the perspective of citizens' rights.¹⁶⁷ Departures from the protection of acquired rights are most often justified by the need to maintain budgetary balance or by the deterioration of the state's economic condition. It must be stressed that this principle applies only to rights justly acquired,¹⁶⁸ rights obtained unjustly are not protected under Art. 2.¹⁶⁹

As noted earlier, the principle of the protection of trust in the state and its laws is also related to the principle *lex retro non agit*. The CT highlighted that this principle is based on values such as legal security, the certainty of legal relations and respect for acquired rights. The Tribunal has consistently treated it as a guideline for law-making organs and as one of the fundamental principles of the legal order.¹⁷⁰ According to this principle, laws should not be applied retroactively, that is, to events that occurred before their entry into force.¹⁷¹

It is noteworthy that the prohibition against retroactivity applies only to provisions that worsen an individual's situation. Where provisions improve this situation, retroactive application is permissible. This prohibition is interpreted most strictly in criminal and tax law.¹⁷² However, retroactive provisions may be deemed constitutional if they improve the legal situation of certain addressees of a legal norm without worsening that of others.¹⁷³ Limiting this principle is permitted only exceptionally and for very compelling reasons.¹⁷⁴

The principles of good legislation also include the one of *vacatio legis*. This principle requires that amendments to existing laws that negatively affect the legal situation of subjects should, as a rule, be introduced with transitional provisions or, at the very least, with an appropriate *vacatio legis*. These mechanisms provide affected subjects with the opportunity to adapt to the new legal framework.

166 See the judgment of the CT of 7 May 2014, K 43/12, OTK ZU No. 5/A/2014, item 50.

167 The ruling of the CT of 22 August 1990, K 7/90, OTK No. 1/1990, item 5.

168 See *ibid.*; the judgment of the CT of 20 December 1999, K 4/99, OTK No. 7/1999, item 165.

169 Cf. Tuleja, 2016.

170 See the judgment of the CT of 19 November 2008, Kp 2/08, OTK ZU No. 9/A/2008, item 157.

171 The judgment of the CT of 16 March 2017, Kp 1/17, OTK ZU A/2017, item 28 and the jurisprudence cited therein. Cf. the ruling of the CT of 29 January 1992, K 15/91, OTK No. 1/1992, item 8.

172 More on that Tuleja, 2016; see e.g. the ruling of the CT of 7 December 1993, K 7/93, OTK No. 2/1993, item 42.

173 Cf. the judgment the CT of 25 September 2000, K 26/99, OTK ZU No. 6/2000, item 186.

174 See the judgment of the CT of 19 November 2008, Kp 2/08, OTK ZU No. 9/A/2008, item 157.

The legislator may dispense with them and introduce immediate application of new laws only if this serves to protect an important public interest that cannot be balanced against individual interests. An example of such an interest is the prevention of fraud and tax abuse.¹⁷⁵

This principle is not explicitly set out in the Constitution, and the CT derived it directly from the concept of a rule-of-law state. However, the CT did not analyse its content in detail or devote significant attention to it in its jurisprudence. Nonetheless, it held that it governs the insurance system.¹⁷⁶

The CT examined this principle in the ruling of 15 December 1992, K 6/92.¹⁷⁷ It held that in a rule-of-law state, agreements should be honoured, and the legal system should be structured to guarantee the certainty of legal relations. This certainty is not undermined by a clause allowing one party to change the content of the performance owed to the other during an obligation relationship. Such a clause falls within the scope of freely shaping the legal relationship and aims to guarantee the equal value of the parties' performances when external conditions beyond their control lower the value of one performance.¹⁷⁸

What is essential for the protection of the individual's rights is the principle of prohibition against violating ongoing interests. This protects individuals who have embarked on specific projects based on existing provisions. It is not an absolute principle. However, this obligation is more categorical when the legislator has indicated specific timeframes during which particular projects could be carried out in accordance with previously determined rules. These situations include: (1) provisions of law that indicate a temporal horizon for the realisation of certain projects; (2) projects that are staged in nature; (3) cases where an individual had *de facto* begun implementing a project when the relevant regulation was in force.¹⁷⁹

From the perspective of protecting ongoing interests, the definition of the projects to which a given regulation applies is crucial. A normative act may set timeframes for projects explicitly defined within the act, or it may provide a general legal framework for all economic or social projects. Ongoing interests are subject to stronger protection when the legislator introduces regulations for clearly specified types of projects.¹⁸⁰

175 The ruling of the CT of 2 March 1992, K 9/92, OTK No. 1/1993, item 6. See also the judgment of the CT of 4 January, K 18/99, OTK No. 1/2000, item 1.

176 More on that: Morawska, 2003, pp. 305–306.

177 The ruling of the CT of 15 December 1992, K 6/92, OTK No. 2/1992, item 27.

178 See inter alia the judgment of the CT of 13 November 2013, K 2/12, OTK ZU No. 10/A/2012, item 121.

179 See e.g. the judgment of the CT of 25 June 2002, K 45/01, OTK ZU No. 4/A/2002, item 46.

180 Ibid.

4.4. *The Principle of Social Justice*

The principle of social justice is also part of the content of Art. 2. The CT described this principle as ‘the inviolable foundation of the Republic of Poland’.¹⁸¹ It stressed that the content of the principle of social justice comprises many elements. It also emphasised that a state is not a democratic rule-of-law state if it does not implement the idea of justice, and that social justice is an aim that a democratic rule-of-law state must achieve.¹⁸²

The CT noted that the concept of justice has many interpretations, but it endorsed the distributive concept of justice. It also linked the concept of justice with that of equality, clarifying *inter alia* that inequality arises from differences in the distribution of goods and the categorisation of people related to that distribution, and that justice is the opposite of arbitrariness. Justice requires that differences among individuals correspond appropriately to differences in their circumstances.¹⁸³ The principle of social justice also imposes on the state the duty to guarantee citizens the social minimum.¹⁸⁴ In the case K 8/98,¹⁸⁵ the CT explained that the principle of justice should be regarded as a factor ensuring a fair balance between the general interest (the common good) and the interests of individuals.

The broad catalogue of values that must be protected and taken into account when implementing the principle of social justice includes the creation of conditions for healthy and stable economic development, budgetary balance, and the right of citizens and their representatives to determine – and to adjust according to circumstances – the current priorities of social and economic policy through proper democratic procedures.¹⁸⁶ The CT also stated that social justice entails maintaining balance in social relations and refraining from granting unjust privileges to selected groups of citizens without objective justification.¹⁸⁷ Furthermore, the principle of justice includes: the equality of rights, social solidarity, the minimum level of social security, and ensuring basic conditions of existence for persons who are involuntarily unemployed.

In the decision K 14/00, the CT outlined the relationship between equality and justice. It noted that the specific norms defining social justice include, in particular, equality, and added that the principle of social justice prohibits, *inter alia*, the introduction of unfair differentiation between individuals subject to the of law. This

181 The judgment of the CT of 12 April 2000, K 8/98, OTK No. 3/2000, item 87.

182 Ibid.

183 The ruling of the CT of 22 August 1990, K 7/90, OTK No. 1/1990, item 5.

184 The ruling of the CT of 13 July 1993, P 7/92, OTK No. 2/1993, item 27.

185 The judgment of the CT of 12 April 2000, K 8/98, OTK No. 3/2000, item 87.

186 The ruling of the CT of 25 February 1997, K 21/95, OTK No. 1/1997, item 7. More on that Banaszak, 2012.

187 The judgment of the CT of 12 April 2000, K 8/98, OTK No. 3/2000, item 87.

prohibition is expressed through equality, which also sets out, in a more precise and specific manner, the criteria for fair differentiation among individuals.¹⁸⁸

The clause of a democratic rule-of-law state has been developed by the CT ever since it entered the Polish legal order through the December Amendment. The CT has gradually derived from it a range of principles that form the foundation of the Polish constitutional order – systemic principles such as sovereignty, democracy, the separation of powers, legality, decentralisation and political pluralism, as well as the rights and freedoms of the individual, including the right to a court, to life, protection of dignity and privacy. These principles are now explicitly expressed in the Constitution. By contrast, those relating to good legislation derived from the clause of a rule-of-law state are as follows: the principle of loyalty, the certainty of law, the unambiguity of law, the principle of the protection of acquired rights, *lex retro non agit* and *vacatio legis*.

5. Conclusions

The concept of a rule-of-law state entered the Polish legal order with the enactment of the December Amendment to the Constitution of the People's Republic of Poland in December 1989. This concept, originally developed by German legal scholars, was then unfamiliar to Polish legal scholars and carried primarily a symbolic meaning. It signified a break with the hitherto system of socialist democracy and the establishment of a new system based on values typical of Western legal orders grounded in democracy.

During the systemic transformation, this concept was incorporated into the constitutions of central European states as a symbol of the new order and as a source of principles forming the foundations of democratic systems. The binding force of the clause of a rule-of-law state in Poland can be divided into three periods: the December Amendment (1989–1992), the Small Constitution (1992–1997) and the current Constitution (since 1997).

The rule-of-law state has no universally accepted definition. Its content is shaped by legal scholars and by the constitutional jurisprudence of each state, and it can evolve over time. This concept is understood as a set of principles and values forming the state's legal order. However, certain elements are regarded as typical of the rule-of-law state. Polish legal scholars recognise that these include, *inter alia*: constitutionalism, a hierarchical system of sources of law, the principle of legality, the separation of powers, the sovereignty of the nation, the democratic legitimacy of law, the constitutional regulation of fundamental rights and freedoms and mechanisms for their effective protection, principles of good legislation (including the unambiguity

188 See the decision of the CT of 27 November 2001, K 14/00, OTK No. 8/2001, item 265.

and precision of law, the prohibition against excessive interference, the *lex retro non agit* principle, the principle of protecting citizens' trust in the state and its laws), and the right to a court.

For the CT, the concept also served as a source of systemic principles and of individual rights and freedoms in the period before the current Constitution entered into force. The systemic principles inferred by the CT from the clause of a rule-of-law state include: sovereignty, democracy, the separation of powers, legality, decentralisation and political pluralism. The individual rights and freedoms derived from the clause encompass: the right to a court, to life, to the protection of dignity and the right to privacy. These principles, rights and freedoms are now explicitly laid down in the Polish Constitution. However, the clause in question continues to serve the CT as a source of the principles of good legislation, which include: the principle of loyalty, the certainty of law, the unambiguity of law, the principle of the protection of acquired rights, *lex retro non agit* and *vacatio legis*.

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