

COMPARATIVE ANALYSIS OF THE QUANTITATIVE INDICATORS OF THE CONSTITUTION OF THE REPUBLIC OF POLAND 1997



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Abstract. The article sets out the main provisions of the Constitution of the Republic of Poland 1997, which have been analysed using the quantitative indicators of the legal act. It has been established that the greatest amount of text is devoted to the rights, freedoms and duties of human and citizen, as well as to the guarantees of their protection. The comparative analysis of the description and quantitative indicators of the law sections that determine the activities of the President of the Republic of Poland, the Sejm, the Senate and the Polish judicial system is carried out. The article deals with the proven facts devote considerable attention to religious issues, as reflected in the preamble to the Constitution of the Republic of Poland and in separate Articles of the document, because of the historical development of Poland and the outstanding role of the Catholic Church in the process of national renaissance.

Keywords: *legal regulation, Constitution, Republic of Poland, human and civil rights, public authorities, concordat.*

Introduction

The relevance of the study stems from the constitutional reform under way in Ukraine. In order to achieve this, it is necessary to consider similar experiences of other countries at different stages of their State development. From this standpoint, the development of the constitutionalism of the Republic of Poland is of considerable interest in view of the similarity of the historical and legal processes that have taken place in that country in the past and are currently taking place in Ukraine. These are, for example, periods of statelessness and renewal, the transition from the socialist model

of the politico-legal order to the market model, the existence of a long period of communist rule during which declarative constitutional acts were adopted, which were only partially implemented. Ukraine and Poland share what can reasonably be regarded as the first European states to adopt constitutional acts, the Pylyp Orlyk Constitution 1710 and the Constitution of Poland 1791 known as the May Constitution.

The interest in the Constitution of the Republic of Poland 1997 is also non-university because it laid down the legal bases for Poland's accession to the European Union, the harmonization of legislation and the holding of elections to the European Parliament. Now Ukraine faces a similar situation with regard to joining the European Union, which requires a solution based on foreign experience, including Polish.

Thus, the study of the basic provisions of the Constitution of the Republic of Poland 1997 (hereinafter referred to as the Constitution of Poland 1997) will help to avoid errors in the reform of the legal system of Ukraine, taking into account the updated vectors of law and the State development.

The scientific novelty of the work is the use of the system of quantitative indicators proposed by B. Kindiuk and O. Kopylenko, which makes it possible to move from the descriptive characteristics of constitutional acts to their substantive analysis.

The analysis of publications shows that research on the 1997 Constitution of Poland is a topic not frequently addressed by domestic scholars. For example, V. Shapoval, B. Tyshchyk, O. Rever, M. Marchuk, P. Stetsuk and some other authors have addressed this issue. In the implementation of this publication, two editions of recent years have been important, which are directly concerned with the analysis of the history of the establishment and development of Polish constitutionalism. A considerable number of scientific studies have been carried out by Polish scientists such as M. Bartoshevich, E. Kowalski, M. Khashkovska, P. Vinzorek, J. Schumanek. Thus, the issues related to the study of the Constitution of Poland 1997 are of considerable scientific and practical interest and require further elaboration.

The purpose of the article is to study the basic provisions of the Constitution of the Republic of Poland 1997 using the method of calculation of quantitative indicators.

Presentation of the main research material should be presented in three ways: 1) review of the background of the document; 2) calculation of the quantitative characteristics of the Constitutional Act; 3) analysis of the structure and provisions of the Constitution of the Republic of Poland 1997.

Polish Constitutionalism has a long and complex history, which began with the adoption of I. Piłsudski in the Decree on the Most Representative Power 1918, the Small Constitution 1919, the Constitution of II Rzeczpospolita 1921, the Constitution of II Rzeczpospolita 1935, the Constitutional Law on the Organization and Competence of the

State authorities 1947, the Constitution of the Polish Republic 1952.

The latest constitutional process was started by the adoption in April of the Constitutional Law «On the Preparation and Procedure for the Adoption of the Constitution of the Commonwealth» 1992, which established the obligatory submission of the draft Constitution to a referendum. In October 1992, a Small constitution was adopted.

A Constitutional Commission consisting of 46 members of the Sejm and 10 senators was formed to draft the document, and leading scholars and practitioners were engaged. A total of seven draft laws of the Basic Law were submitted, but for reasons of dissolution by the President of Poland in May 1993, they were not considered. A new Constitutional Commission was reconvened by Parliament. During this period, 6 more drafts of the Constitution of Poland were drafted and the Parliament began its consideration in 1994. A consolidated draft of the Basic Law was subsequently approved. Under the legislation in force at the time, a referendum was held in Poland on 25 May 1997 in which 52.7 per cent of the electorate voted in favour of the draft Constitution of Poland, on the basis of which the President of Poland, Alexander Kwasniewski, signed the text of the Constitution of Poland on 16 July 1997, entered into force on 17 November 1997. In the opinion of B. I. Tyshchyk, the Constitution of Poland is democratic, it regulates in detail the issues of socio-economic, State-political life and contains a significant list of rights, freedoms and duties of human and citizen (Tyshchyk, 2012, p. 465).

A study of the main provisions of the Constitution of Poland 1997 requires methodological tools. As noted by V. Kampo, a new generation of methods based on the synthesis of natural-legal, civilizational, legal, sociological, psychological and many other methods is on the agenda of the methodology of constitutional and legal research (Kampo, 2014, p. 161).

The research uses a methodology for calculating quantitative indicators, which contains a definition of the number of signs included in Articles, sections and, in general, all legal acts. For the analysis of the distribution of the material, statistical

indicators are used - the coefficient of variation C_v , which shows the variation of the sum of the signs according to their average value, and the coefficient of asymmetry C_s , by which the part of the act contains the bulk of the text can be determined. This method was used by B. Kindiuk and O. Kopylenko to study the Criminal Code of Ukraine and the Law of Ukraine «On Environmental Protection», which made it possible to obtain important scientific results. Therefore, it makes sense to apply the quantitative methodology to the study of the Constitution of Poland 1997 (Constitution of the Republic of Poland. Constitution of the States of Europe, 2001).

Table 1.

Quantitative indicators of the Constitution of the Republic of Poland 1997

Number	Section	Total number of signs	Number of Articles	%
	Preamble	1563	-	1.74
I	Republic	5711	29	6.37
II	Freedoms, Rights and Duties of Human and Citizen	17589	57	16.6
III	Political rights and freedoms	3531	8	3.94
IV	Sejm and Senate	11628	31	12.9
V	The President of the Republic of Poland	10015	20	11.8
VI	Council of Ministers and Administration of Government	7056	17	7.88
VII	Territorial self-government	3019	10	3.37
VIII	Courts and tribunals	9936	29	10.1
XIX	State monitoring and rights protection authorities	4105	14	4.58
X	Public finance	4776	12	5.33
XI	Emergencies	4078	7	4.55
XII	Constitutional amendment	1459	1	1.6
XIII	Transitional and final provisions	4934	8	5.5
	Total:	89524	243	

Calculations have shown that the total number of signs comprising this legal act is 89,524 and they are located in 243 Articles, grouped into 13 sections (Table 1).

In comparison, the Constitution of Ukraine 1996 contains 114,904 signs in 161 Articles contained in 13 sections, which is 22 per cent more than the Polish Act.

The analysis of the results obtained shows that the largest amount of Section II «Freedoms, Rights and Duties of Human and Citizen» of the Constitution of Poland 1997, which has 17,589 signs located in 57 Articles, accounts for 16.6% of the total amount of material. It consists of five parts:

1. General provisions.
2. Personal rights and freedoms.
3. Political rights and freedoms.

4. Economic, social and cultural rights and freedoms.

5. Responsibilities.

Such details of rights and obligations are linked to Poland's historical experience, the occupation of foreign States and the total violation of human rights during the communist era, and the imposition of martial law by General V. Jaruzelsky in 1981. Therefore, Article 30 of the Constitution of Poland 1997 proclaims the inviolability of the dignity of human beings, the safeguarding of their freedoms and rights, and indicates that their protection is a fundamental duty of the State. The subsection 2 «Personal rights and freedoms» regulates in detail the prohibition of torture, cruel inhuman treatment, use of corporal punishment and subjection to

scientific experimentation without the person's consent. Considering the numerous crimes of the Fascist invaders during the Second World War, as well as the Soviet forces suppressed the protests in the territory of Poland, Article 43 of the Constitution of Poland 1997 contains a norm, which determines the non-applicability of statutory limitations for war crimes against humanity.

The subsection 3 «Political rights and freedoms» defines guarantees of freedoms and organizations of peaceful assemblies, associations, participation in them, the right to receive information about the activities of public authorities. The historical experience of the Polish State development related to the activity of the trade union «Solidarity», which led to the collapse of the communist regime in the country, was reflected in Article 59 of the Constitution of Poland 1997, dedicated to trade unions and consists of four paragraphs. Thus, the right to freedom of association, the right to organize strikes and to negotiate for the settlement of collective disputes is provided for. It is noted that the scope of freedoms of association in trade unions may be restricted by law, but only in accordance with international treaties.

The subsection 4, which deals with economic, social and cultural rights and freedoms, regulates the right to property, the right to safe working conditions, social security, health care and education. The humanization of Polish law and respect for the family are reflected in Article 72 of the Constitution of Poland 1997, which consists of four parts and is devoted to the protection of the rights of the child. Of interest is Article 72, paragraph 4, of the Constitution of Poland 1997, which introduces the post of Ombudsman for the Rights of the Child and the need to adopt a law defining its powers. A special feature of this unit is its presentation of the rules for the protection of nature, which are reflected in Article 74 of the Constitution of Poland 1997, which contains four paragraphs: they emphasize the duty of the State to ensure environmental security and to support citizens' actions aimed at protecting the environment.

The novelty of the Constitution of Poland 1997 is the existence in Section II Article 85 of the alternative variants of the exercise of the military duty of a Polish citizen, providing for the replacement of the latter by other types of service determined by law, where

there are religious beliefs or moral principles which impede the military service performance.

The second largest part is Section IV «Sejm and Senate», which consists of two parts: a) deputies, senators; b) organizational activities. It contains 31 Articles and 10,015 signs, or 11.8% of the total material.

The Polish Parliament has an upper chamber, the Senate – 100 senators, and a lower chamber, the Sejm – 460 deputies. Deputies are elected by direct universal suffrage for a term of four years. Dissolution of the Sejm means simultaneous termination of the powers of the Senate. A feature of the Constitution of Poland 1997 is the decisive role of the Sejm in law making, since it considers draft laws, after which they are submitted to the Senate. This authority has the power to call a referendum, decide on the course of the war. to make peace and establish commissions of inquiry.

The third largest Section in the Constitution of Poland 1997 is Section V «The President», which contains 10 015 characters in 20 Articles, accounts for 11.8% of the total volume of the document. The President of the Republic of Poland, according to Article 126 of the Constitution of Poland 1997, is vested with the supreme representative functions of the State at the international level, he is the guarantor of the continuity of State power and the supreme commander-in-chief (Article 134 of the Constitution of Poland 1997). The President is elected by universal suffrage for a term of five years and may be re-elected only once. He has wide powers, some of which are exercised at its discretion and without the signing of its acts by the President of the Council of Ministers of Poland. V. M. Shapoval is talking about the varying degree of participation of the President of Poland in the work of the Government. For example, in order to resolve issues, it is of particular importance that the President of the Republic of Poland is authorized to convene a Government Council, which meets under his chairmanship (Shapoval, 2007, pp. 366-367).

A characteristic feature of this section is the use of Article 131 of the sanctions rules, which make it possible to eliminate the President of Poland by decision of the State Tribunal. At the same time, Article 145 of the Constitution of Poland 1997 enumerates the reasons why the President of Poland may be prosecuted, namely: for violation of the

Constitution, for violation of the law, for commission of an offence. The indictment requires the approval of at least 2/3 votes of the lawful number of members of the National Assembly upon the proposal of at least 140 members of the National Assembly.

The fourth largest part in the Constitution of Poland 1997 is Section VIII «Courts and Tribunals», which consists of 29 Articles containing 9936 signs or 10.7% of the total amount of material. Under Article 173 of the Constitution of Poland 1997, these authorities have a separate authority independent of the other authorities. Thus, the judiciary consists of the Supreme Court, courts of general jurisdiction, administrative courts, including the Supreme Administrative Court, military courts, the Constitutional Court and the State Court. The State Court exercises a control function, the Constitutional Court resolves disputes over competence between the central constitutional authorities of the State (Article 189 of the Constitution of Poland 1997).

The smallest number of signs (1459, or 1.6% of the total volume of material) is in

section XII, containing 1 Article. However, this section plays a significant role in the Constitution of Poland 1997. It defines the procedure for amending the Basic Law. The consideration of the provisions of Article 235 shows the existence of a complicated procedure, which begins with the submission, signed 1/5, of the total number of Sejm deputies. However, the Senate and the President of the Republic of Poland may introduce such a bill. Another important provision is that the Act amending the Constitution of Poland shall be adopted by the Sejm by a majority of at least 2/3 votes in the presence of at least half of the legal number of deputies, and the Senate – by an absolute majority of votes in the presence of at least half of the legal number of senators.

The digital values of the quantitative indicators of the Constitution of Poland 1997 sections make it possible to construct a graph of the volume of the material which shows the uneven distribution of the material in the document (Figure 1).

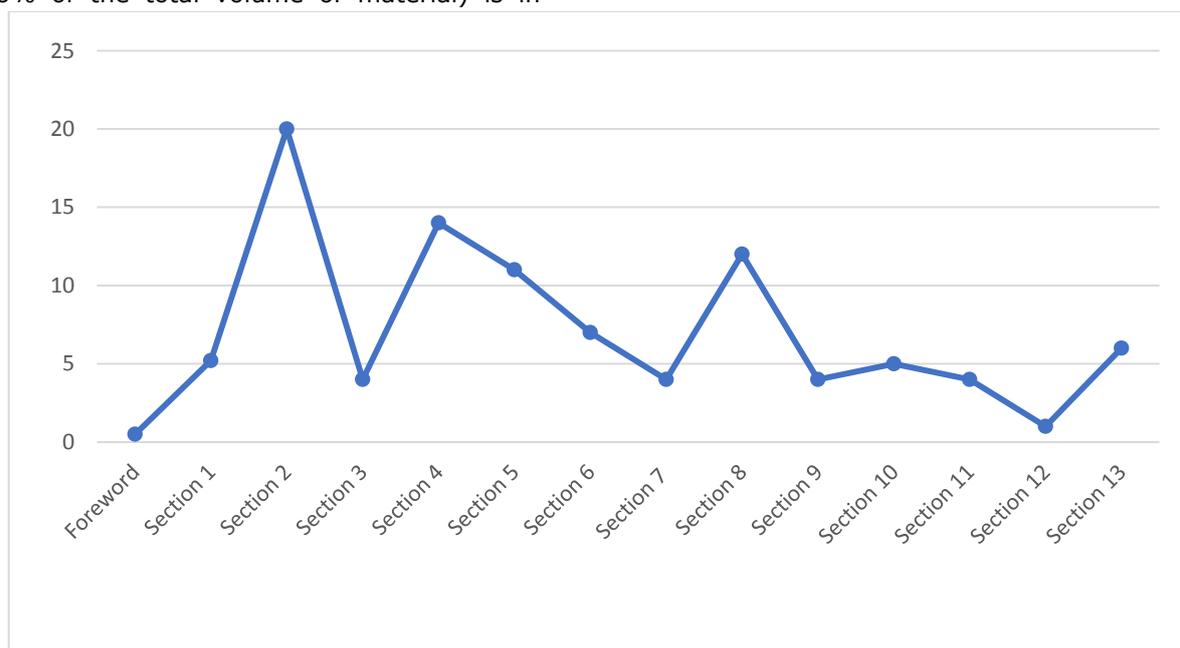


Fig. 1. Distribution of act material of the Constitution of the Republic of Poland 1997 (%)

The review of the results shows that there are three maximums, which show that the authors of the document have not been able to distribute the legal material evenly. Another proof of this provision is the calculation of the coefficient of variation showing the scale of variation relative to the mean value C_v , equal to 0.97; the value of the coefficient of asymmetry C_s is 2.21, which means that the bulk of the textual material is

concentrated in the beginning of the Constitution of Poland 1997.

An analysis of the structure of the Constitution of Poland 1997 shows that it meets the formal requirements of legal technique, that is, it consists of a preamble, a general part and transitional and final provisions, and contains a list of acts that cease to have effect with its adoption, and the date of entry into force.

The Constitution of Poland 1997 has a three-tiered structure (Constitution -> Section -> Article). Some sections are divided into subsections. These are Section II, Section IV, Section IX, which do not have through numbering. For example, section IV «Sejm and Senate» contains the following subsections: Elections and terms of office; Deputies and senators; Organization and activities.

The Constitution of Poland 1997 begins with a preamble that sets out its main objectives, namely the establishment of a sovereign, democratic State in which justice reigns. Reference is made to the enormous sacrifices made by the Polish people in the struggle for independence. An important provision is the need to protect human rights and freedoms, preserve human dignity and respect for justice and social dialogue. Attention is drawn to the tradition of republican rule in Poland. According to O. Mazaieva, the preambles reflect the basic ideas, concepts and doctrinal views that make up the text, while at the same time providing value guidelines for the national legislation development (Mazaieva, 2012, p. 304).

The social and legal meaning of constitutions is reflected in the types of constitutional norms, the different relationships they regulate, the legal significance and form of expression, namely, norms-rules, norms-principles, norms-definitions, norms-symbols, norms-issues (Habrieva, 2005, pp. 53-56).

In the construction of Section I of the Constitution of Poland 1997, the authors of the act used the task rules which determine the direction of the Polish State development and law making. For example, Article 1 states: «The Republic of Poland is the common good of all citizens».

The Constitution of Poland 1997 is characterized by a significant amount of religious material, which is set out in the preamble, Articles 25, 53 and amounts to 1,842 signs, or 2.1 per cent of the total material. This was due to the historical development of Poland, which was long divided between the Russian and Austro-Hungarian Empires, part of the land belonged to the Kingdom of Prussia and later to the

German Empire. For this reason, the Polish population, which was mainly Catholic, was subjected to religious persecution by German Protestants and the Russian Orthodox Church. Under foreign occupation, Catholicism was the centre of the unity and revival of the Polish nation, which effectively countered German influence during the Second World War and Soviet influence in the post-war period. With this in mind, the authors of the Constitution of Poland 1997 in the preamble point to the belief in God as a source of truth, justice, goodness and beauty, as well as to the Christian heritage of the Polish people. In considering this peculiarity, it must be borne in mind that the content of the Constitution of Poland 1997 was influenced by the existence of a concordat signed in 1993, which introduced religious education in secondary schools and kindergartens, introduced pastoral service in prisons and hospitals, established a special mechanism of financial relations between the State and the Church.

Under Article 25 of the Constitution of Poland 1997, churches and other religious organizations were recognized as equal, and the Polish authorities were required to ensure freedom of expression of religious views in public life. One of the provisions of this Article is the stipulation that relations between the State and the churches. It is based on the principles of mutual independence and cooperation for the benefit of individuals and society. As stated in paragraph 4 of this Article, the relations between the Republic of Poland and the Catholic Church are determined by an international treaty concluded with the Apostolic Chair.

Freedom of religion, in turn, is enshrined in Article 53 of the Constitution of Poland 1997, according to which every Polish citizen is guaranteed freedom of conscience and religion, the right to worship, rites, prayers and the right to religious education. The Basic Law imposes on parents the obligation to provide children with moral and religious instruction in accordance with their beliefs. In addition, Article 53, paragraph 4, of the Constitution of Poland 1997 stipulates that religion may be studied at school without violating the freedom of conscience and religion of others.

Conclusions

The findings of the study are as follows:

1) the reason for the Constitution of Poland 1997 adoption was to ensure the transition from the socialist model of the democratic State to a market model based on the rule of law, to stabilize the national statehood and to proclaim a policy of accession to the European Union;

2) the research of the Constitution of Poland 1997 structure revealed its three-tiered structure, the presence in some parts of it sections which do not have through numbering. According to the calculations carried out, it has been proved that the issues of freedoms, rights and duties of the human and the citizen receive the most attention. Section XIII of the Act, which deals with the complex procedure for amending the Constitution of Poland, has the lowest number of signs and ensures its stability;

3) the Constitution of Poland 1997 devotes considerable attention to religious issues, which are reflected in the preamble and in separate Articles of the document, due to the historical development of Poland and the outstanding role of the Catholic Church in the process of national reconstruction.

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