

BIAŁYSTOK LAW BOOKS

BLB

7

Krzysztof Prokop

POLISH
CONSTITUTIONAL LAW



Temida2
Białystok 2011

Reviewer: Stanisław Bożyk

Advisory Board:

Leonard Etel, Marian Grzybowski, Adam Jamróz, Dariusz Kijowski, Cezary Kosikowski, Adam Lityński, Emil Pływaczewski, Stanisław Prutis, Eugeniusz Ruśkowski, Walerian Sanetra, Halina Świączkowska, Bogdan Wierzbicki

Editor-in-Chief: Jerzy Banasiuk

Cover design: Jerzy Banasiuk

Publisher: Temida 2, Faculty of Law, University of Białystok

Series Editor: Izabela Kraśnicka

English language consultant: Aleksandra Czajka

Copyright © 2011 by Temida 2, Poland. All rights reserved. Printed in Poland. This publication is protected by Copyright and permission should be obtained from the publisher prior to any reproduction, sortage in a retrieval system, or transmission in any form or by any means, electronic, mechanical, photocopying, recording, or likewise.

ISBN: 978–83–62813–13–1

ISSN: 2083–9790

Temida 2

Mickiewicza 1

15–213 Białystok, POLAND

Tel.: (+48) 85 7457168 • Fax: (+48) 85 7406089

temida2@uwb.edu.pl

www.temida2.pl

Table of contents

| | |
|-----------------------------|----|
| List of abbreviations | 15 |
| Introduction..... | 17 |

Part 1

The history of Polish constitutional law

| | |
|--|----|
| 1. The Constitution of May 3 rd , 1791 and 19th-century constitutions... | 19 |
| 2. Constitutions of the Second Polish Republic (1918–1939)..... | 21 |
| 3. Constitution of the People’s Republic of Poland (1952) | 24 |
| 4. The process of constitutional changes from 1989 and enactment of the Constitution of the Third Republic..... | 26 |
| 4.1. The April Amendment and the December Amendment of 1989 r. | 26 |
| 4.2. The Small Constitution (1992) | 28 |
| 4.3. Preparation and enactment of the Constitution of the Third Republic of Poland (1997)..... | 30 |

Part 2

Key principles of the Constitution of the Republic of Poland

| | |
|--|----|
| 1. The principle of sovereignty of the Nation | 32 |
| 2. The principle of a democratic law–observing state | 34 |
| 3. The principle of tripartition of powers..... | 37 |
| 4. The principle of parliamentary system of government | 38 |
| 5. The principle of political pluralism..... | 41 |
| 6. The principle of decentralization of public authority and territorial self–government..... | 43 |
| 7. The principle of social market economy..... | 45 |

Part 3
Human and civic rights and liberties

| | |
|--|----|
| 1. Basic principles of constitutional regulation..... | 47 |
| 2. Subjects of rights and liberties..... | 49 |
| 3. Personal rights and freedoms | 51 |
| 3.1. Right to life | 51 |
| 3.2. Freedom from scientific experimentation, including medical, without voluntary consent..... | 53 |
| 3.3. Freedom from torture and other cruel, inhuman or degrading treatment or punishment..... | 53 |
| 3.4. Personal inviolability | 54 |
| 3.5. Right to fair court procedure..... | 55 |
| 3.6. Right to privacy | 55 |
| 3.7. Freedom of movement in the territory of the Republic of Poland | 56 |
| 3.8. Freedom of conscience and religion | 56 |
| 3.9. Freedom to express opinions, to acquire and disseminate information..... | 57 |
| 4. Political rights and freedoms | 57 |
| 4.1. Freedom of assembly | 58 |
| 4.2. Freedom of association | 58 |
| 4.3. Right of access to the public service..... | 60 |
| 4.4. Right of access to public information..... | 60 |
| 4.5. Right to petition | 61 |
| 5. Economic, social and cultural rights and freedoms | 61 |
| 5.1. Right of ownership | 62 |
| 5.2. Freedom of economic activity | 63 |
| 5.3. Labour rights..... | 63 |

| | |
|---|----|
| 5.4. Rights ensuring the individual basic material welfare..... | 64 |
| 5.5. Right to healthcare..... | 65 |
| 5.6. Right to education..... | 66 |
| 5.7. Right to unpolluted natural environment..... | 66 |
| 6. Means of protecting rights and freedoms..... | 67 |
| 7. Duties | 67 |

Part 4
Sources of law

| | |
|--|----|
| 1. Basic principles of constitutional regulation..... | 68 |
| 2. The Constitution..... | 69 |
| 2.1. Content of the Constitution..... | 70 |
| 2.2. The procedure for adopting and changing the Constitution .. | 70 |
| 2.3. The legal force of the Constitution | 72 |
| 3. Statutes | 72 |
| 4. Ratified international agreements | 73 |
| 5. Regulations | 75 |
| 6. Local law..... | 75 |
| 7. Internal law | 77 |
| 8. Promulgation of normative acts | 77 |

Part 5
Institutions of direct democracy

| | |
|---|----|
| 1. Direct democracy and its forms | 79 |
| 2. Referendum..... | 81 |
| 2.1. National referendum | 81 |
| 2.2. Local referendum..... | 83 |
| 3. Popular initiative..... | 84 |

Part 6
Elections to the Sejm and Senate

| | |
|---|----|
| 1. Principles of election law | 86 |
| 2. Organization of elections | 89 |
| 3. Nominating candidates..... | 90 |
| 4. Election campaign..... | 91 |
| 5. Voting | 92 |
| 6. Establishing the results of elections..... | 93 |
| 7. Stating validity of elections | 94 |
| 8. Mandate of a deputy and a senator | 94 |

Part 7
The Sejm and the Senate

| | |
|--|-----|
| 1. The principle of parliamentary bicameralism. The National Assembly | 97 |
| 2. Organization of activities of the Sejm and the Senate | 98 |
| 3. Bodies of the Sejm and the Senate..... | 102 |
| 3.1. The Marshal | 102 |
| 3.2. Presidium | 102 |
| 3.3. Council of Seniors | 103 |
| 3.4. Committees | 103 |
| 3.5. Parliamentary form of organization of deputies and senators ... | 104 |
| 4. Functions of Sejm and Senate | 104 |
| 4.1. Legislative function | 105 |
| 4.2. Supervisory function..... | 109 |
| 4.3. Creative function | 112 |
| 4.4. Function shaping basic directions of the state policy | 113 |
| 4.5. Intraorganizational function..... | 113 |

Part 8
President of the Republic of Poland

| | |
|---|-----|
| 1. The constitutional position of the President of the Republic of Poland | 114 |
| 2. Presidential elections and mandate | 117 |
| 3. Competences of the President | 120 |
| 3.1. Competences in relation to the Sejm and the Senate | 120 |
| 3.2. Competences in relation to the Council of Ministers | 120 |
| 3.3. Competences in relation to the judicial power | 121 |
| 3.4. Competences related to foreign affairs | 121 |
| 3.5. Competences related to national defence and security | 122 |
| 3.6. Other competences..... | 122 |
| 4. Countersignature | 123 |
| 5. Accountability of the President..... | 123 |

Part 9
The Council of Ministers

| | |
|--|-----|
| 1. The constitutional position of the Council of Ministers | 125 |
| 2. Composition of the Council of Ministers..... | 126 |
| 3. The procedure for appointing the Council of Ministers..... | 127 |
| 4. Competences of the Council of Ministers..... | 130 |
| 5. Internal organisation and the working procedure of the Council of Ministers | 131 |
| 6. Responsibility of the Council of Ministers and its members | 133 |

Part 10
Local government

| | |
|--|-----|
| 1. Constitutional regulation of local government | 136 |
|--|-----|

| | |
|--|-----|
| 2. Units of local government..... | 138 |
| 3. Self–government elections..... | 140 |
| 4. Constituting bodies | 142 |
| 5. Governing bodies..... | 143 |
| 6. Tasks of local government..... | 145 |
| 7. Supervision over local government | 146 |

Part 11

Courts

| | |
|--|-----|
| 1. Constitutional regulation of judicial power | 147 |
| 2. The structure of common courts of law | 148 |
| 3. The Supreme Court..... | 149 |
| 4. Special courts..... | 150 |
| 5. The status of a judge | 151 |
| 6. The National Council of the Judiciary | 153 |

Part 12

The Constitutional Tribunal

| | |
|---|-----|
| 1. The constitutional position of the Constitutional Tribunal..... | 154 |
| 2. Composition of the Constitutional Tribunal. The mandate of a judge..... | 155 |
| 3. Organs of the Constitutional Tribunal | 156 |
| 4. Control over legal norms | 157 |
| 5. Proceedings under the Constitutional Tribunal..... | 158 |
| 6. Judgements by the Constitutional Tribunal | 161 |
| 7. Constitutional complaint..... | 162 |
| 8. Other functions of the Constitutional Tribunal..... | 164 |

Part 13
The State Tribunal

| | |
|--|-----|
| 1. Introductory remarks..... | 166 |
| 2. The State Tribunal’s political position and organization..... | 166 |
| 3. Subjective and objective scope of constitutional accountability .. | 168 |
| 4. Proceedings within the subject of constitutional accountability... | 170 |
| 4.1. Initial proceedings | 170 |
| 4.2. Proceedings in the Commission of Constitutional Accountability | 171 |
| 4.3. Bringing an indictment | 172 |
| 4.4. Proceedings before the State Tribunal | 173 |
| 5. Practice..... | 174 |

Part 14
Bodies of state control and protection of law

| | |
|--|-----|
| 1. The Supreme Chamber of Control..... | 175 |
| 2. The Commissioner for Citizens’ Rights | 178 |
| 3. The National Council of Radio Broadcasting and Television | 182 |

Part 15
Public finance

| | |
|--|-----|
| 1. Introductory remarks..... | 185 |
| 2. The principle of statute exclusivity within the scope of public finance..... | 186 |
| 3. Substantial regulations | 187 |
| 4. The mode of enacting a budgetary statute | 188 |
| 5. Control of the implementation of the budgetary statute | 190 |
| 6. Position and organisation of the National Bank of Poland | 192 |

Part 16

Extraordinary measures

1. The essence of extraordinary measures 195

2. Constitutional principles on extraordinary measures..... 196

3. Martial law 197

 3.1. Prerequisites and procedure of the introduction
 of a martial law 197

 3.2. Limitation of human and citizens' liberties
 and rights under the martial law 199

 3.3. Rules of operation of the organs
 of public authority under martial law 202

4. State of emergency..... 204

 4.1. Prerequisites and procedure of introduction
 of a state of emergency 204

 4.2. Limitation of human and citizens' liberties
 and rights during the state of emergency 205

 4.3. The rules of operation of the organs
 of public authority during the state of emergency 205

5. State of natural disaster..... 206

 5.1. Prerequisites and procedure of the introduction
 of a state of natural disaster 206

 5.2. Limitation of human and citizens' liberties
 and rights during a state of natural disaster 207

 5.3. The rules of operation of organs of public authority during
 a state of natural disaster 208

Part 17

The Republic of Poland in the European Union

1. Constitutional aspects of the accession process..... 210

2. Elections to the European Parliament 215

| | |
|--|-----|
| 3. Parliamentary Commissions for the European Union Affairs | 217 |
| 4. Proceeding in cases of projects of statutes implementing the laws of the European Union..... | 219 |
| 5. Cooperation of the Council of Ministers with the Sejm and the Senate in cases related to the membership of the Republic of Poland in the European Union | 221 |
| 6. Application of the European Union law | 224 |
| | |
| Bibliography | 227 |

LIST OF ABBREVIATIONS

- EU – European Union
- MP/MEP – Member of the Parliament/Member of the European Parliament
- NIK – Najwyższa Izna Kontroli (The Supreme Chamber of Control)
- GDP – Gross Domestic Product
- NBP – Narodowy Bank Polski (The National Bank of Poland)

INTRODUCTION

The arrangement of the content of the *Polish Constitutional Law* – generally speaking – corresponds to the structure that exists in books of constitutional law written in Polish. It is directly connected with the text of the Polish Constitution of 2nd April, 1997. The main part of the discussion was preceded by presentation of the evolution of the Polish constitutional law until the enactment of the current Constitution (Part I). Part II puts under discussion general principles of the Polish Constitution, then the rights and freedoms of man and citizen (Part III), sources of law (Part IV), institutions of direct democracy (Part V) and the right of election to the Parliament (Part VI). The other parts refer to the structure of state bodies, based on Montesquieu principle of tripartition of powers. Part VII is devoted to the legislative power (the Sejm and the Senate), Part VIII – to the President of the Republic of Poland, Part IX – to the Council of Ministers, Part X – to the local government, Part XI – to courts, Part XII – to the Constitutional Tribunal, Part XIII – to the State Tribunal, while Part XIV – to the bodies of state control and protection of law. Further two chapters are dedicated to public finance (Part XV) and extraordinary measures (Part XVI). The book closes with Part XVII, devoted to constitutional aspects of the Polish membership in the European Union.

The legal situation presented in the book was valid for 1st May, 2011.

The author hopes that the present manual will aid the reader in mastering basic knowledge of Polish constitutional law.

Krzysztof Prokop