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Axiology of the Constitution of the Republic of Poland of 2 April 1997

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Summary

This work is an attempt to determine the axiological basis for the constitutional system of the Republic of Poland. Summing up the findings concerning the fundamental values of the state political system underlying the solutions of the Constitution of the Republic of Poland of 2 April 1997, we can conclude that it should have the following attributes: to be the common good of all the citizens, a democratic state implementing the idea of the sovereignty of the Nation and civic society, a state that is ruled by law, independent and sovereign, secular, diligent and efficient, implementing the concept of separation of powers. The constitutional values referring to the status of “human and citizen” are: the dignity and freedom of the person, equality and solidarity of all persons, an individual’s personal, social and legal security and the protection of their freedoms and rights. In accordance with the Constitution of the Republic of Poland, the axiological foundation of the socio-economic system is social market economy based on three pillars: 1) freedom of economic activity, 2) private ownership, 3) solidarity, dialogue and cooperation of social partners. The list of these values should be complemented with the social values which determined the adoption of the concept of social market economy, social justice and social security of citizens.

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Streszczenie**Aksjologia Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.**

Niniejsze opracowanie stanowi próbę określenia aksjologicznych podstaw konstytucyjnego ustroju Rzeczypospolitej Polskiej. Sumując ustalenia dotyczące fundamentalnych wartości ustroju politycznego państwa, na których są oparte rozwiązania Konstytucji RP z 2 kwietnia 1997 r., możemy stwierdzić, iż powinno ono posiadać następujące przymioty: być dobrem wspólnym wszystkich obywateli, państwem demokratycznym, w którym jest urzeczywistniana idea suwerenności Narodu i społeczeństwa obywatelskiego, prawnym, niepodległym i suwerennym, świeckim, rzetelnym i sprawnym, realizującym koncepcję podziału władzy. Wartościami konstytucyjnymi odnoszącymi się do statusu „człowieka i obywatela” są: godność człowieka, jego wolność, równość wszystkich i ich solidarność, bezpieczeństwo osobiste, socjalne i prawne jednostki, jak też ochrona jej wolności i praw. Fundamentem aksjologicznym ustroju społeczno-gospodarczego Konstytucja RP czyni społeczną gospodarkę rynkową, opartą na trzech filarach: wolności działalności gospodarczej; 2) własności prywatnej, 3) solidarności, dialogu i współpracy partnerów społecznych. Katalog tych wartości trzeba uzupełnić o te wartości społeczne, które determinowały przyjęcie koncepcji społecznej gospodarki rynkowej: sprawiedliwości społecznej i bezpieczeństwa socjalnego obywateli.

I.

Analyzing the political and socio-economic system of a state, we first of all need to consider the axiological foundations of that system. It is so because an internally coherent system is usually subject to certain axiological assumptions by means of referring to specific values and ideas and their expression. These assumptions are formulated in the doctrine and reflected in the provisions of the basic law – constitution, especially in the systemic principles adopted in it.

Despite this obvious conclusion, the issue of axiology of the Constitution of the Republic of Poland of 2 April 1997 is not frequently the subject of scientific analyses and comments, and as a result, it is not studied and described in a sufficient manner. This study is an attempt to identify the values which

make the foundation on which the Polish constitutional legislator based the general structure of the state's political and socio-economic system.

II.

Constitutional values mean "certain states which are to be implemented through the shape of the constitutional norms and the legal system based on the constitution", approved by the legislator, positively evaluation and highly desired². The synonym of values understood this way is the "good". All the constitutional values understood this way may be associated with the evaluative and postulative aspect of the term "constitutionalism"³. They are not legal norms but their determinants. They are characterized by certain indefiniteness and ambiguity; they can be interpreted differently and are usually difficult to express using the legal jargon. It is also extremely important that: "They often need to be defined both on the basis of specific provisions of the constitution and of axiological concepts and doctrine structures which provide the background for the text of the constitution and the interpretation of its content"⁴. They are an expression of certain theories concerning the issues of a state system and a doctrine-based approach to them. It may be said that constitutional values show an ideal, desired state; in other words, they are some very general directives, guidelines having a great evaluative load, which are transformed into legal norms in the provisions of the constitution. Many of them can even – to a greater or lesser degree – be regarded as examples of the "constitutional magic", expressed as "treating what is unreal and abstract

² Z. Ziemiński, *Wartości konstytucyjne*, Warszawa 1993, p. 26. The general definition of value can be summarized by the following statement: it is "any material or ideal item, an idea, an institution, a real or imagined thing towards which individuals or communities have the attitude of respect, consider it to have an important role in their lives and feel the imperative desire to achieve it" (J. Szczepański, *Elementarne pojęcia socjologii*, Warszawa 1970, pp. 97–98). For the different ways of understanding values and the relation between them and the constitution, see e.g. P. Winczorek, *Konstytucja i wartości*, [in:] *Charakter i struktura norm konstytucji*, ed. J. Trzciniński, Warszawa 1997, pp. 35 ff.

³ See W.J. Wołpiuk, *Instytucja konstytucjonalizmu a prawo konstytucyjne*, [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej*, *Księga jubileuszowa dedykowana Prof. Marii Kruk-Jarosz*, eds. J. Wawrzyniak, M. Laskowska, Warszawa 2009, p. 152.

⁴ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2014, p. 56.

as something that is real and existing”⁵. This comment can for example refer to two values making the axiological foundation of the Constitution of the Republic of Poland: the state as a common good and the dignity of the person.

The kind of system of dominant values adopted in a constitution is the criterion which places it in a certain group of basic laws with the same or similar axiological foundations. The specificity of such a system results in a specific type of state structure, hence the changes in the aforesaid system lead to the “re-evaluation” of that structure, the transformation of it characteristics. What needs to be emphasized is the very important interpretative role of constitutional values as independent patterns of control of law constitutionality, as well as the evaluation criteria of specific political or socio-economic practice taking place in the country.

The necessity to base the constitutional regulation of the state structure on them is the consequence of an obvious fact that a state cannot be axiologically neutral. The choice of the values determining its structure and assigning them a certain order depend on the system of world views adopted by the creators of the basic law and on the socio-political doctrine associated with it (its subtypes are specific legislative and legal doctrines), or potentially on a certain vision of the structure of the state system compiling the values originating from various systems and doctrines.

It should be stressed that there are no axiologically neutral constitutions, because every statehood is shaped on the basis of a certain set of values. Thus, it is their innate feature to express values, which are the directives that bind public authorities. Therefore, it is legitimate to single out the axiological function as one of the functions of the basic law. It is confirmed by the fact that the law is “a kind of deposit which reflects and protects values, ideals and symbols shared in the community. Thus, it is a reflection of that community, a significant element of its self-awareness, playing the basic role in defining the national, cultural and axiological identity of the nation that adopted it”⁶. The axiological function is an equal determinant of the role of constitution among the

⁵ K. Complak, *Magiczna rzeczywistość w Konstytucji RP*, [in:] *Ustroje. Historia i współczesność. Polska – Europa – Ameryka Łacińska. Księga jubileuszowa dedykowana Profesorowi Jackowi Czajowskiemu*, eds. M. Grzybowski, G. Kuca, P. Mikuli, Kraków 2013, p. 290.

⁶ J.J.H. Weiler, *Chrześcijańska Europa. Konstytucyjny imperializm czy wielokulturowość?*, Poznań 2003, pp. 29–30.

roles and tasks of that law determined by its other functions, such as the legislative, organizational, integration, and educational ones, as well as the functions of petrifying (stabilizing) the state political system and directing its evolution (also referred to as the dynamic or programming function).

The constitutional values of the state structure of the Republic of Poland which are identified in this study are very often treated as constitutional principles of that structure. This way of treating them seems to be legitimate whenever principles are not defined in a way that determines their legal character but more broadly – as the most general and crucial judgements of the constitutional legislative authority which characterize the state structure, its basic political and socio-economic assumptions⁷. In my opinion, we should approach the same way the descriptive understanding of the constitutional principle saying that it is “a pattern of development of a certain normalization subject included in the constitution, indicating the mode of solving a certain issue, singled out from a certain perspective, arranging the system of constitutional law and used for the interpretation of the norms of that law”⁸. The directive-based understanding of constitutional principles as legal norms aimed at a specific addressee taking up certain behavior is divergent from the above-mentioned description of the essence of constitutional values⁹.

III.

The determination of what kind of system of values was adopted by the constitutional legislator in the case of a particular constitution may not be an

⁷ See e.g. B. Banaszak, *Prawo konstytucyjne*, Warszawa 2012, p. 15; Z. Witkowski, *Zakres konstytucjonalizacji zasad ustrojowych w polskich aktach konstytucyjnych XX wieku*, [in:] *Konstytucjonalizacja zasad i instytucji ustrojowych*, ed. P. Sarnecki, Warszawa 1997, pp. 59–60; P. Tuleja, *Źródła prawa*, [in:] *Prawo konstytucyjne RP*, ed. P. Sarnecki, Warszawa 2014, p. 49.

⁸ J. Kuciński, *Naczelné zasady ustrojowe polskich aktów konstytucyjnych obowiązujących przed wejściem w życie Konstytucji RP z 1997 r.*, [in:] *Ustrój polityczny państwa. Polska, Europa, Świat. Prace ofiarowane Profesorowi Tadeuszowi Mołdawie z okazji siedemdziesięciolecia urodzin*, eds. S. Sulowski and J. Szymanek, Warszawa 2013, p. 88.

⁹ On the directive-based and descriptive way of expressing constitutional principles, see: P. Tuleja, *Zasady konstytucyjne*, [in:] *Konstytucjonalizacja zasad i instytucji ustrojowych*, ed. P. Sarnecki, Warszawa 1997, pp. 15 ff; M. Zieliński, *Konstytucyjne zasady prawa*, [in:] *Charakter i struktura nom konstytucji*, ed. J. Trzcíński, Warszawa 1997, pp. 61–62.

easy task. We need to note that the conclusions regarding this issue are to a great extent dependent on the individual views of those who interpret the norms of the basic law. In the case of Constitution of the Republic of Poland of 1997, the judgements of the Constitutional Tribunal are not very helpful in drawing such conclusions, as they still do not provide a clear vision of both the system of constitutional values and the principles of state structure. Granted, this body stresses the vital role of axiological interpretation of the Constitution of the Republic of Poland and often refers to values, but it also introduces a kind of “terminology confusion”, because instead of specifying the criteria for differentiation between the elements of the specific triad made up by constitutional values, principles and norms, it actually obscures their essence and the relations between them¹⁰. In addition, the values interpreted by the Constitutional Tribunal of the Republic of Poland are not always clearly, unambiguously and convincingly justified.

This freedom of interpretation is first of all the consequence of the fact that not all fundamental values must be formulated *expressis verbis* in the text of the constitution; they may be “hidden in the deeper layer or structure of the basic law, in its systemic axiological context, behind the apparently are technical and procedural provisions”¹¹. However, the values which the constitutional legislator decided to refer to in a straightforward way usually vary greatly regarding the attributed importance in the adopted axiological system, which results in the need to select the most important of them, ones that make the substance and justification of the principles of state structure. All the constitutional values should be considered in close connection with a particular social basis for the application of the constitution, as depending on the specificity of that basis there may be some differences in the way of their perception, and as a result, the solutions based on them do not have to be identical.

¹⁰ See the analysis and evaluation of judgements of the Constitutional Tribunal in this regard: K. Działocha and S. Jarosz-Żukowska, “Wartości konstytucyjne” w orzecznictwie Trybunału Konstytucyjnego, [in:] *Studia z prawa konstytucyjnego. Księga jubileuszowa dedykowana Profesorowi Wiesławowi Skrzydle*, eds. J. Połuszny, J. Buczkowski, K. Eckhardt, Przemyśl-Rzeszów 2009, p. 81 ff.

¹¹ Z. Witkowski, *Konstytucja pisana a konstytucja faktyczna w Polsce – garść refleksji*, [in:] *Prawa człowieka – społeczeństwo obywatelskie – państwo demokratyczne, Księga jubileuszowa dedykowana Profesorowi Pawłowi Sarneckiemu*, eds. P. Tuleja, M. Florczak-Wątor, S. Kubas, Warszawa 2010, p. 208.

The Constitution of the Republic of Poland of 2 April 1997, being the result of a broad political compromise, extending and integrating the systemic achievements and ideas of the socio-political transformation period of 1989, draws on different ideological concepts and is an expression of agreement between values belonging to different axiological systems: between the liberal democratic, socio-democratic and Christian democratic vision of the state-society-individual relations¹². It means that from the axiological point of view it is an eclectic, slightly “off balance” work, which, however, is natural in pluralist communities¹³. But as a result of the compromise, despite the adopted axiological pluralism the vision of the state emerging from the provisions of the Constitution of the Republic of Poland is coherent and transparent¹⁴.

Many of such values are mentioned in the Preamble to the Constitution, which is understandable if we remember that the preambles of basic laws, usually expressing the “kind of constitutional legislator’s prospective of the world of values (the axiological state) of the state constitution”¹⁵, serve the purpose of “integration of present and future generations around a certain system of values, legitimization of the established system of authority and stressing the role of the new basic law in this system”¹⁶. The values solemnly proclaimed in the Preamble include those connected with specific systemic principles adopted in the Constitution, as well as values connected with the history, experiences, traditions and culture of the nation, or ones referring to world view or moral issues. It has to be mentioned that although the importance of these values in the general system of constitutional axiology is very significant, they still should not be treated as the leading ones, which means ones for whom all the other values reflected in the provisions of the articles

¹² See P. Winczorek, *Konstytucja Rzeczypospolitej Polskiej: nadzieje, obawy, rezultaty*, [in:] *Pięć lat Konstytucji Rzeczypospolitej Polskiej. Materiały z konferencji na Zamku Królewskim w Warszawie, 17 X 2002 r.*, ed. H. Jerzmański, Warszawa 2002, pp. 82 i 91; idem, *Pięć lat konstytucji*, “ResPublica Nowa” 2002, no. 3, p. 82.

¹³ K. Działocha and S. Jarosz-Żukowska, op.cit., p. 83.

¹⁴ Z. Stawrowski, *Aksjologia i duch Konstytucji III Rzeczypospolitej*, “Przegląd Sejmowy” 2007, no. 4, p. 50.

¹⁵ M. Granat, *Pojmowanie konstytucyjnych zasad prawa w orzecznictwie Trybunału Konstytucyjnego*, [in:] *Zasady naczelné Konstytucji RP z 2 kwietnia 1997 r.*, eds. A. Bałaban i P. Miś, Szczecin 2011, pp. 152–153.

¹⁶ L. Garlicki, *Wstęp*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warszawa 2007, p. 3.

of the Constitution are ancillary¹⁷. An abundance of values, including those having the fundamental importance, not only repeating or extending the values referred to in the Preamble, can also be found in Chapter I of the basic law ("The Republic") and in Chapter II ("The Freedoms, Rights and Obligations of Persons and Citizens").

A significant form of expressing specific ideas and values in the Constitution is the general clauses – provisions which refer to values other than legal (evaluations or rules). Some of them provide the basis for the formulation of constitutional principles of the state structure. A number of such principles are proclaimed in some constitutional programming norms, i.e. norms that determine certain directions of the state's activity and the state's objectives. One area of constitutional regulation which requires very frequent reference to values is the provisions concerning rights and freedoms and the system of their protection¹⁸. Currently, the most general standard in this regard is the acceptance of the human rights doctrine, included in different international documents. It should also be emphasized that the basic law contains both provisions formulating the prohibitions on violating or observing certain values and provisions which require the protection of certain values or their application in choosing actions oriented at the achievement of certain goals.

Since Poland belongs to the European Union, before presenting them it is also worth showing the relations between the values on which the whole legal order of the Union is based and the values which determine the foundations of the constitutional system of the Republic of Poland. Quoting Jerzy Kuciński and Waldemar Jan Wołpiuk, all the member states form a certain "axiological community" (both in the context of the whole Union and from the perspectives of each member state), respecting a certain *quantum* of shared values¹⁹. The system of such fundamental values is first of all expressed in art. 2 of the Treaty on European Union²⁰, providing that: "The

¹⁷ See A. Bałaban, *Polskie problemy ustrojowe (Konstytucja, źródła prawa, samorząd terytorialny, prawa człowieka)*, Kraków 2003, pp. 42–46.

¹⁸ See P. Tuleja, *Normatywna treść praw jednostki w ustawach konstytucyjnych RP*, Warszawa 1997, p. 58.

¹⁹ J. Kuciński i W.J. Wołpiuk, *Zasady ustroju politycznego państwa w Konstytucji Rzeczypospolitej Polskiej z 1997 roku*, Warszawa 2012, p. 103.

²⁰ O J of the EU C 83 of 30 March 2010, consolidated text.

Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail". All the values included in the Treaty are also elements of the axiological system of Polish Constitution of 2 April 1997. It is the same in the case of constitutions of other member states. This is even more understandable if we remember that the political systems of all those states are governed by the same general model vision of a democratic state.

IV.

The fundamental elements of axiology of the Constitution of the Republic of Poland, which according to the Constitutional Tribunal make "a kind of device framing this axiology"²¹, are two values: the state as the common good of all the citizens, and the dignity of the person.

The vision of a state as a common good of all the citizens, associated with the broader concept of common good proclaimed in the Catholic social teachings, was outlined in art. 1 of the Constitution, saying that "The Republic of Poland shall be the common good of all its citizens". This description of Polish statehood, assuming among others the ancillary role of the state with regard to its citizens, is tantamount to the definition of Poland as the common good contained in the Preamble²².

The Preamble also contains a call directed at all those who apply the Constitution for respecting the inherent dignity of the person. The fact that the constitutional legislator attaches great importance to that dignity, perceived as the "fundamental value of the contemporary European societies"²³ and the foundation of the contemporary concept of human rights, is also proved by the content of art. 30, which treats it as "a source of free-

²¹ See K. Działocha, S. Jarosz-Żukowska, *op.cit.*, p. 110.

²² See W. Brzozowski, *Konstytucyjna zasada dobra wspólnego*, "Państwo i Prawo" 2006, no. 11, pp. 19–20.

²³ H. Izdebski, *Fundamenty współczesnych państw*, Warszawa 2007, p. 29.

doms and rights of persons and citizens”, refers to it as “inalienable” and states that “the respect and protection thereof shall be the obligation of public authorities”. Both these constitutional values are closely interrelated, as a result of which art. 1 and 30 of the Constitution, which refer to them, “must not be treated separately, as they are provisions which specify the idealistic foundations of the state and social order”²⁴. On the one hand, human dignity determines the acceptable range of interference in the good of an individual for the sake of common good (the state), and on the other hand, the participation of the individual in this choice creates conditions which help realize that dignity.

The issue is which of the values should be given priority. The Constitutional Tribunal puts human dignity first in the constitutional axiology. In the light of its judgements, on the basis of art. 30 of the Constitution, the concept of the dignity of the person “should be regarded as a constitutional value that is central for the formation of axiology of the current constitutional solutions”²⁵. The constitutional court seeks in it the “foundation of constitutional axiology”²⁶ and the “plane of reference for the system of values around which the Constitution was developed, as well as the foundation of the whole legal order in the State”²⁷. A similar view within the area of constitutional law is represented among others by Leszek Garlicki²⁸ and Krystian Complak²⁹. A different and less common view of this subject is held e.g. by Paweł Sarnecki: in his opinion, the “key and basic” value is the ancillary character of the state in relation to all its inhabitants, derived from art. 1 of the Consti-

²⁴ Judgement of the Constitutional Tribunal of 30 October 2006, P 10/06 (OTK-A 2006, no. 9, item 128).

²⁵ Judgement of the Constitutional Tribunal of 30 September 2008, K 44/07 (OTK-A 2008, no. 7, item 126).

²⁶ Judgement of the Constitutional Tribunal of 4 April 2001, K 11/00 (OTK-A 2001, no. 3, item 54).

²⁷ Judgement of the Constitutional Tribunal of 23 March 1999, K 2/98 (OTK-A 1999, no. 3, item 38).

²⁸ L. Garlicki, *Wolności i prawa jednostki w Konstytucji Rzeczypospolitej Polskiej z 1997 roku. Bilans pięciu lat*, [in:] *Pięć lat Konstytucji Rzeczypospolitej Polskiej. Materiały z konferencji na Zamku Królewskim w Warszawie 17 października 2002 r.*, ed. H. Jerzmański, Warszawa 2002, p. 62.

²⁹ K. Complak, *Uwagi o godności człowieka oraz jej ochrona w świetle nowej konstytucji*, “Przegląd Sejmowy” 1998, no. 5, p. 43.

tution³⁰. Marek Piechowiak is a heated supporter of regarding the principle of the state as the common good as the most significant of all the constitutional values; according to him, it is the “first principle of the constitutional order”, which “constitutes the framework of the legal system”. The principle of the dignity of a person is “the structural (integral) element” of the principle of common good, on the basis of which the values protected by human freedoms and rights, including the respect for and protection of their dignity, are the basic axiological element of the Republic of Poland³¹.

However, regardless of the stance towards the above-mentioned issue, it is commonly thought that the specific role of the state outlined in art. 1 of the Constitution of the Republic of Poland, original in comparison to the contemporary constitutions of other European countries, is the point of reference for other constitutional values affecting the concretization of legal framework of its political and socio-economic system, and shows the direction of correct interpretation of many principles and regulations of the constitution³². The other value, human dignity, is the plane of reference not only for the values which directly refer to the “human and citizen”, but also those that characterize the general concept of the state assumed by the legislator, its general social and political order.

On the grounds of provisions of the Constitution of the Republic of Poland, common good is a multi-dimensional category involving all the areas of the state’s political system having the fundamental importance for maintaining the constitutional order: individual freedoms, rights and obligations, the functioning of public life institutions, and establishing laws³³. This multi-dimensional character is not only expressed in the number of the spheres mentioned, but also in the variety of constitutional values which determine them, whose source, foundation and overriding interpretative directive is

³⁰ P. Sarnecki, *Idee przewodnie Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*, “Przegląd Sejmowy” 1997, no. 5, p. 11.

³¹ M. Piechowiak, *Dobro wspólne jako fundament polskiego porządku konstytucyjnego*, Warszawa 2012, p. 435.

³² Cf.: M. Zubik, *Refleksje nad “dobrem wspólnym” jako pojęciem konstytucyjnym*, [in:] *Prawo a polityka*, ed. M. Zubik, Warszawa 2007, pp. 392–383.

³³ Cf. J. Trzciński, *Rzeczpospolita Polska dobrem wspólnym wszystkich obywateli*, [in:] *Sądownictwo administracyjne gwarantem wolności i praw obywatelskich 1980–2005*, eds. J. Górka, R. Hauser, J. Trzciński, Warszawa 2005, p. 455.

the common good of all the citizens: namely, the state. However, it is not the state as an abstract entity but “the state corresponding to the constitutional characteristics, and at least aiming at making reality reflect the relevant constitutional principles and provisions”³⁴, that is this kind of good. The foundation of this characteristics is the system of values covered an integrated by common good, recognized by the constitutional legislator and reflecting the legislator’s perception of the essence of the specific statehood: the Republic of Poland.

The idea of state as common good is mainly specified, extended and supplemented by art. 2 of the Constitution: “The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice”. This statement is often interpreted as a proclamation of one complex systemic principle, being a specific “triune principle”, whose elements are a democratic state, a state ruled by law, and a state implementing the principles of social justice (a just one). This principle is given the highest systemic rank, it is often considered to be “the principle above all principles”³⁵. On the other hand, the three attributes of the state indicated in art. 2 of the Constitution are also sometimes treated as separate. It seems that the essence of the Constitution as proclaiming the approval for certain systemic values should be viewed in still another way.

In my opinion, it does not have the normative character, because it only identifies the model, desired qualities of a state, thus providing its axiological foundation. These qualities – constitutional values derived from art. 2 of the Constitution of the Republic of Poland – are: a democratic state, a state ruled by law, and a state that implements the principles of social justice. The interrelation of all these three values is obvious. It is particularly visible in the case of the first two ones. As rightly pointed out by A. Kubiak: “Without progressing democratization of a contemporary state, the idea of a state ruled by law would not have its proper dynamics. On the other hand, maintaining or rather consolidating the democratic system would not always be possible

³⁴ W. Sokolewicz, *Artykuł 1*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warszawa 2007, p. 6.

³⁵ T. Słomka, *Tożsamość konstytucyjna III Rzeczypospolitej (prologomena)*, [in:] *Konstytucja Rzeczypospolitej Polskiej z 1997 r. Ciągłość i zmiana*, eds. T. Słomka, A. Materska-Sołnowska, Warszawa 2012, p. 39.

without consistent implementation of the demands of a state ruled by law”³⁶. However, it does not seem legitimate to treat a state ruled by law as the “fundamental element of a democratic state”³⁷, and conversely, the democratic systemic form as an element of a state ruled by law³⁸, or to consider these properties as tantamount³⁹. Separate treatment of the three constitutional values referred to in art. 2 of the Constitution is supported by the fact that they reflect not identical aspects of statehood: the subject of supreme power in the state and the methods of implementing that power, the role of law in the state and society, and the direction of public authorities’ activities in the implementation of both the function of establishing and application of law.

Most generally, a democratic state has the model of state authority in which the subject of that authority is the organized community of all citizens, referred to in constitutions as “the nation” or “the people”. The Constitution of the Republic of Poland considers the nation to be such an entity with the supreme authority in Poland (Art. 4 sec. 1: “Supreme power in the Republic of Poland shall be vested in the Nation”). In this perspective, the supremacy (sovereignty) of the nation is one of the basic constitutional values, complementing and specifying the idea of democratic state, since it is – according to M. Sobolewski – “the supreme assumption of the democratic political ideology and hence of the demanded, ideal model of the political system”⁴⁰. Such a general model also involves the form of a state ruled by law, whose detailed reconstruction is really difficult. Scientific views and the judgements of court bodies, especially the Constitutional Tribunal, are helpful in determining its content.

In the constitutional declaration of the directive of the state implementing the principles of social justice we can seek a reference to the idea of social, welfare state, engaging in the life of the society, especially by means of redistribution of national income (this occurs e.g. in the Federal Republic of

³⁶ A. Kubiak, *Państwo prawne – idea, postulaty, dylematy*, “Państwo i Prawo” 1991, no. 7, p. 26.

³⁷ See e.g. A. Jamróz, *Demokracja współczesna. Wprowadzenie*, Białystok 1993, p. 71 et seq.

³⁸ See e.g. J. Zakrzewska, *Trybunał Konstytucyjny – konstytucja – państwo prawa*, “Państwo i Prawo” 1992, no. 12, p. 10.

³⁹ See e.g. A. Sylwestrzak, *Aktualność problematyki podziału władzy*, [in:] *Idee jako źródło instytucji politycznych i prawnych*, ed. L. Dubel, Lublin 2003, p. 145.

⁴⁰ M. Sobolewski, *Zasady współczesnej demokracji burżuazyjnej*, Kraków 1983, p. 13.

Germany or in France). The crowning statement of art. 2 of the Constitution of the Republic of Poland, saying that the Republic of Poland is a state implementing the principles of social justice, clearly suggests that their function is to give this ambiguous value certain normative content. Social justice is a value that first of all refers to the socio-economic system of the state.

The ideas of democratic state and the sovereignty of the nation are related to the idea of civic society, which is not mentioned in the Constitution explicitly but can be interpreted from its content, e.g. by the Constitutional Tribunal. This value determines the recommended model of relations both between the members of the state community (citizens) and between the society and public authorities. It is legitimate to say that the Nation, pursuant to art. 4 of the Constitution exercising the supreme power, is explained and introduced in the Constitution with the image of a "civic society"⁴¹, meaning a society made up of individuals that are active, conscious and autonomously organized so as to articulate and satisfy group and individual needs and interests⁴². Civic society understood this way is axiological and postulative in character, being a philosophical and legal concept of a certain ideal social order⁴³.

Without describing or commenting the variety of views concerning the perception of this idea, let us only observe that one of its basic assumptions is the existence of heterogeneous society with multiple, varied, particular group interests and needs, and the intention to create the proper framework and conditions for their formulation and articulation, i.e. social (political) pluralism.

From the point of view of the essence of the state as common good of all its citizens, the significant values several times referred to in the Constitution are also the independence and sovereignty of the state. The Preamble of our basic law recalls the time when the Polish Nation was devoid of the possibility of sovereign and democratic determination of the fate of the Homeland. It also mentions the gratitude for our ancestors for their fight for

⁴¹ P. Sarnecki, *Idea samorządności w strukturze społeczeństwa obywatelskiego*, [in:] *Samorząd w Konstytucji RP z 2 kwietnia 1997 r.*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2013, p. 12.

⁴² The nature of the society is reflected in the brief conclusion of the Constitutional Tribunal: it is "the society of free, conscious, active citizens, engaged in public matters". Judgement of the Constitutional Tribunal of 27 May 2003, K 11/03 (OTK-A 2003, no. 5, item 43).

⁴³ See D. Pietrzyk-Reeves, *Idea społeczeństwa obywatelskiego*, Toruń 2012, p. 9.

independence. In art. 5 of the Constitution, the task of safeguarding the independence and integrity of the state territory is presented as the key function of the Republic of Poland. This task, in turn, is the determinant of the role of the Armed Forces of the Republic of Poland set forth in art. 26 sec. 1, and the duty of every Polish citizen to defend the Homeland, pointed out in art. 85 sec. 1. It is also worth mentioning the obligation of the President of Poland to safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory, imposed in art. 126 sec. 2.

The constitutional values of primary importance for the determination of the state's systemic identity also include the reliability and efficiency of the state, being a generalization, or "summary", of the qualities of state functioning demanded by the legislator such as the diligence and efficiency in the work of public bodies referred to in the Preamble and the cooperation of authorities; another premise included in the constitution is social dialogue (referred to in the Preamble and art. 20). The concept of a system of state authority bodies adopted in the Constitution of the Republic of Poland, based on the idea of separation of powers which is currently one of the key values of democratic states and their universal element, can also be considered in the context of achievement of the goal of state sovereignty. The very high rank of this principle is confirmed by art. 10 section 1 of the Constitution, stating that: "The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers". Although it would be an overinterpretation to say that in the light of this provision the separation of powers is the only pillar of the whole political system of the state, the importance of this idea definitely exceeds the sphere of organization of the state apparatus. It is so because preventing the exercise of unlimited and tyrannical power in the state, this principle is an important factor of affirmation and guarantee of human rights⁴⁴.

Another vital attribute of the state, evident in the provisions of the Constitution of the Republic of Poland, is the secular character of the state⁴⁵. Pol-

⁴⁴ See R. Piotrowski, *Zasada podziału władz w Konstytucji RP*, "Przegląd Sejmowy" 2007, no. 4, pp. 113–114.

⁴⁵ See R.M. Małajny, *Zasada państwa świeckiego*, [in:] *W służbie dobru wspólnemu. Księga jubileuszowa dedykowana Profesorowi Januszowi Trzcinińskiemu*, eds. R. Balicki, M. Masternak-Kubiak, Warszawa 2012, p. 113.

ish constitutional legislator, supporting the religious neutrality of the state, determined the secular character of the state. This is most fully proved by art. 25 of the Constitution, declaring among others that churches and other religious organizations shall have equal rights (sec. 1), that public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious, philosophical, or concerning outlooks on life (sec. 2), and that the relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good (sec. 3).

So as to supplement the above-mentioned findings, let us also list the constitutional derivative values that are ancillary with respect to the fundamental value concerning an individual: "inherent and inalienable" dignity of the person. The expression and consequence of its approval is the valid Polish basic law upholding values such as: freedom of the person (Preamble and art. 31 sec. 1), all persons' equality (Preamble and art. 32) and solidarity (Preamble and art. 20). Extremely important in this context is also the keynote of constitutional regulation of the freedom and rights of the person: the desire to ensure personal, social and legal security of individuals. The dignity of the person as a constitutional value must also correlate with the state having the image which would promote its fullest implementation. This directive is fulfilled by the aforementioned qualities of the state, which are the axiological determinants of the constitutional political system of the Republic of Poland. It also corresponds to the goal of the constitutional system of the Republic of Poland, outwardly presented in the basic law: to guarantee (ensure) the freedoms and rights of the person (Preamble and art. 5).

V.

Constitutional regulations in contemporary democratic states usually exceed the sphere of political system in the above-mentioned meaning. The subject of these regulations has been undergoing transformations since the drawing up of the first constitutions, resulting e.g. from the change of views of the role and tasks of the the state regarding the economic life within it.

The Constitution of 2 April 1997 also includes a number of provisions which determine the framework of socio-economic system, especially in art. 20–24. According to the Constitution, the axiological foundation is social market economy. In art. 20 it provides that such economy, “based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland”. This article is a general clause which determines the economic model of the state and the form of the social order⁴⁶.

The concept of social market economy was developed directly after WWII as part of the German neo-liberal economic thought and was then implemented in the economic practice of the Federal Republic of Germany. This concept of economy involves two ideas: those of a market economy and of welfare state, which means “the state does not only serve as a watchman, as assumed in the doctrine of liberalism, but on the other hand it does not serve as welfare state alone”⁴⁷. Referring to art. 20 of the Constitution of the Republic of Poland, the Constitutional Tribunal so defined the term “social market economy”: “departure from the purely liberal understanding of an economic system, which rejected any interference of the state in the functioning of market mechanisms and was based on maximizing the employer’s own benefits. Thus, the term ‘social market economy’ used in art. 20 should be understood as acceptable adjustments of the laws of the market by the state in order to achieve certain social needs which cannot be satisfied with such laws functioning totally free. From the normative perspective, this expression means the state’s obligation to take actions to alleviate the social effects of the functioning of the laws of the market, at the same time respecting those laws”⁴⁸. Social market economy is to be the means of social stabilization, ensuring dignified living conditions for all those who are unable to meet the challenges connected with the functioning of the market, particularly some tensions or even crises on the market.

A simple consequence of the Constitution of the Republic of Poland providing for social market economy is basing that economy on three axiolog-

⁴⁶ Constitutional Tribunal in its judgement of 30 January 2001, K 17/00 (OTK-A 2001, no. 1, item 14).

⁴⁷ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, p. 27.

⁴⁸ Judgement of 30 January 2001.

ical pillars in art. 20: 1) freedom of economic activity, 2) private ownership, 3) solidarity, dialogue and cooperation of social partners. All these three pillars belong to the basic constitutional values of the socio-economic system. This list should be supplemented with the social values which determined the adoption of the concept of social market economy, first of all social justice, whose principles – in accordance with art. 2 – are to be implemented by the Republic of Poland. The goal of the constitutional legislator formulating the clause of social market economy must also have been to ensure the citizens social welfare, which is expressed in the constitutional regulation of their social rights, too.

Further, social market economy should be considered in the context of other constitutional values discussed above in relation with the presentation of axiological foundations of political system. Pursuant to art. 1 of the Constitution, these first of all include the Republic of Poland as the “common good of all its citizens”, which means that if necessary, the general good should be above the individual good or group interests. As the Constitutional Tribunal pointed out: “This directive should be the basic criterion of action in the model of social market economy adopted in the constitution”⁴⁹. Other values that should be taken into consideration are especially the ideas of: democracy, a state ruled by law, and the dignity of the person.

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⁴⁹ Ibidem.

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