Grzegorz Koksanowicz¹

Selected Aspects of the Application of the Constitution's Provisions by the Sejm of the Republic of Poland²

Keywords: Constitution, legislative process, principle of the parliament autonomy, direct application of the Constitution

Słowa kluczowe: konstytucja, postępowanie ustawodawcze, zasada autonomii parlamentu, bezpośrednio stosowanie konstytucji

Summary

The direct application of the constitutional provisions gives rise to many problems due to the particularities involved. These problems can be encountered not only in a judicial, but also in a managerial type of law application. Within the framework of the last model, the application of the constitutional provisions has to be considered through the Sejm of the Republic of Poland. The constitutional law focuses on the institutions of the political system. It determines the structure, functions, the competencies and the relationship between them. Taking into consideration the fact that the parliament has an important influence on the functioning of governance, the issue of the direct application of constitutional provisions by that authority is taking on new significance. The issue of the application of the constitutional rules relating to the Sejm internal organisation and its political functions has to be considered as relevant. The order of the direct application of the constitution indicates not only the necessity of application of the regulations, which define its organisation, opera-

¹ The Author is a PhD in the Department of Constitutional Law of the Faculty of Law and Administration of the Maria Curie-Skłodowska University in Lublin. E-mail: koksanowiczkancelaria@wp.pl.

² The text was published in a joint publication entitled: "Zagadnienia stosowania prawa. Perspektywa teoretyczna i dogmatyczna", eds. W. Dziędział, B. Liżewski, Lublin 2015.

tion and the subject of activity, but also these, which express so-called principles and values. Their full normative content is generally determined in jurisdiction of Constitutional Tribunal, which in turn obliges the Sejm and its authorities to apply these regulations in a manner which takes into account the judicial acquis of this organ.

Streszczenie

Wybrane aspekty stosowania przepisów Konstytucji przez Sejm Rzeczypospolitej Polskiej

Bezpośrednie stosowanie przepisów konstytucji, z uwagi na ich specyfikę, rodzi szereg problemów zarówno w sądowym jak i kierowniczym typie stosowania prawa. W ramach tego ostatniego modelu rozpatrywać należy stosowanie przepisów konstytucji przez Sejm Rzeczypospolitej Polskiej. Prawo konstytucyjne koncentruje się na instytucjach systemu politycznego. Określa ich strukturę, funkcje i kompetencje oraz zachodzące pomiędzy nimi relacje. Z uwagi na fakt, iż parlament posiada istotny wpływ na funkcjonowanie systemu rządów, kwestia bezpośredniego stosowania przepisów konstytucji przez ten organ nabiera zasadniczego znaczenia. Za istotną uznać należy problematykę stosowania norm konstytucyjnych odnoszących się do organizacji wewnętrznej Sejmu oraz jego ustrojowych funkcji. Nakaz bezpośredniego stosowania konstytucji oznacza konieczność stosowania nie tylko przepisów, które określają jego organizację, tryb funkcjonowania i przedmiot działania ale także tych, które wyrażają tzw. zasady i wartości. Ich pełna normatywna treść z reguły ustalana jest w orzecznictwie Trybunału Konstytucyjnego, co z kolei obliguje Sejm i jego organy do stosowania tych przepisów w sposób uwzględniający dorobek orzeczniczy tego organu.

I. Introductory remarks

The direct application of the Constitution is a wide and multifaceted issue. The subject of the scientific analysis is the concept of direct application of the Constitution, the scope of norms of the fundamental law which may be applied directly, as well as, finally, the problems of legal entities which should apply the Constitution³. Pursuant to the content of Art. 8 paragraph 2: "The

³ K. Działocha, *Bezpośrednie stosowanie Konstytucji RP (stan doktryny prawa)*, [in:] *Bezpośrednie stosowanie Konstytucji Rzeczypospolitej Polskiej*, ed. K. Działocha, Warsaw 2005, p. 16.

provisions of the Constitution shall apply directly, unless the Constitution provides otherwise”. The cited provision does not restrict the direct application of the Constitution only to the courts, but extends it to other entities as well⁴. In the doctrine there are two different types of the application of law: judicial and administrative (managerial). The managerial type of the application of law is characteristic, *inter alia*, of one of the key bodies in the government system of our country, which is the Sejm of the Republic of Poland.

Narrowing the topic of the dissertation and focus on the aforesaid body is due to several reasons. Firstly, as I have already mentioned, the problem of the direct application of the Constitution is a multifaceted issue; therefore, raising all or majority of the problems connected therewith, undoubtedly, exceeds the framework of this dissertation. Secondly, the constitutional law, as a field governing the grounds for political, social and economic system in the state, generally concentrates on the institutions of political system. It defines the structure, functions, and authorities of the highest state bodies and the relations between them. The mutual relations between the parliament, the head of the state, and the government are the special field of interests for constitutional experts due to the fact that the regulations thereof affect the certain system of governance functioning in a given state.

Considering the provisions of the binding Constitution, despite the wide authorities reserved for a segment of the executive branch, particularly for the government, it is the parliament that is a central link with a crucial influence on the functioning of the governance in Poland.

II. Constitutional regulation of the internal organisation of the Sejm

The first problem connected with the direct application of the constitutional norms by the Sejm concerns the internal organisation thereof. The main provision of the Constitution regarding this issue is the provision of Art. 112. Pursuant to the said Article: “The internal organization and conduct of work of the Sejm and the procedure for appointment and operation of its organs as well as the manner of performance of obligations, both constitutional and statutory, by State organs in relation to the Sejm, shall be specified in the rules

⁴ Ibidem, p. 18.

of procedure of the Sejm adopted by the Sejm”. The cited regulation is a consequence of the principle of the parliament autonomy resulting from the principle of the distribution of power. The expression thereof is, inter alia, the regulative autonomy. It is expressed in the right of the parliament to independently pass the regulations stipulating its internal organisation and rules of procedure. This autonomy is guaranteed by accepting the fact that the regulations are passed by the chambers of the parliament in the form of a resolution⁵.

The principle of the parliament autonomy is not absolute. The constitutional provisions always define the subject limits thereof. The Constitution stipulates them in two ways. Firstly, it defines its matter in the provision constituting the basis for passing the regulations; secondly, it settles independently on certain issues which formally fall within the scope of the principle of autonomy.

The Constitution settled that the matter of the regulations should consist of the following four areas: 1) internal organization, 2) conduct of work of the Sejm, 3) the procedure for appointment and operation of its organs, 4) the manner of performance of obligations, both constitutional and statutory, by State organs in relation to the Sejm. It also directly settled on the legal personality of some bodies of the Sejm, i.e. the Marshal of the Sejm and parliamentary committees. To a certain extent it also limited the conduct of work of the Sejm, inter alia, by introducing the principle of the consideration of a bill in three readings, by equipping the Marshal with the right to refuse to vote on the amendment which previously was not submitted to a committee, or by creating the possibility to withdraw a bill by a sponsor before the end of the second reading.

When applying the provisions of the Constitution referring to its internal organisation, on the one hand, the Sejm must consider and apply the said norms which directly settle certain issues regarding its autonomy, on the other hand, however, when passing its regulations, the Sejm cannot exceed the said limits of its autonomy stipulated by Art. 112 of the Constitution.

In view of these considerations, there is a key issue concerning the model of heading the work of the chamber. Undoubtedly, this issue should be included in the matters covered by the principle of the autonomy of the parlia-

⁵ L. Garlicki, *Regulamin Sejmu w systemie źródeł prawa (na tle orzecznictwa Trybunału Konstytucyjnego)*, “Przegląd Sejmowy” 1994, no. 4, pp. 17–18.

ment. The entry into force of the currently binding Constitution resulted in animated scientific discussion in this very area. It should be reminded that along with its entry into force the institution of the presidium of the Sejm has become deconstitutionalized. Article 10 § 2 of the Constitution of 17 October 1992, in force until then, said: "The Marshal and the vice-marshals constitute the presidium of the Sejm. The presidium shall hold the sessions of the Sejm and head its work". The currently binding Art. 110 § 2 of the Constitution says: "The Marshal of the Sejm shall preside over the debates of the Sejm, safeguard the rights of the Sejm as well as represent the Sejm in external matters".

The cited provision is worded in such a way that it is allowed to apply it directly, so it may be treated "as enumeration of the basic authorities of the Marshal"⁶. However, does the Constitution settle on the model of heading the work of the chamber? The question raised is important because in the scientific discourse there appeared some voices that the fact that the institution of the presidium of the Sejm has become deconstitutionalized, and the constitutional definition of the Marshal of the Sejm as a body which "shall preside over the debates of the Sejm, safeguard the rights of the Sejm as well as represent the Sejm in external matters" give cause to state that the Constitution determined that it should be a model of heading the work of the Sejm by a single person.

This view is based on the following premises: the expressions used in the Constitution defining the tasks of the Marshal of the Sejm, and in particular the expressions: "presides over the debates of the Sejm" and "safeguards the rights of the Sejm" are replaced with the phrase: "heads the work of the Sejm". In the opinion of the author of this view, J. Mordwiłko, the Marshal, when realizing the task: "safeguards the rights of the Sejm," should deal with the fundamental matters, i.e. a) the proper operation of the representative body, b) the proper performance of the functions and competencies by the Sejm, i.e. in a way that is compliant with the values of a democratic state of law, c) the proper operation of the internal bodies, d) the proper performance of their duties by the deputies and the protection of their rights⁷. It means that, in

⁶ L. Garlicki, *Uwaga do Art. 110*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, T. 2, ed. L. Garlicki, Warsaw 2001, p. 5.

⁷ J. Mordwiłko, *O dwóch przypadkach interpretacji konstytucji w świetle praktyki parlamentarnej*, [in:] *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*,

the opinion of the said author, the Constitution established a new model of heading the work of the Sejm, which assumes the existence of the Marshal and vice-marshals of the Sejm only⁸.

It is hard to agree with this view. In my opinion, *inter alia*, Art. 8 § 2 of the Constitution does not allow for this. Taking into consideration the wording thereof and the content of Art. 112 of the Constitution (the principle of the regulative autonomy of the chamber) and Art. 110 paragraph 2 of the Constitution, it should be pointed out that the cited view is contrary to the principle of the direct application of the provisions of the Constitution. Firstly, the content of Art. 110 § 2 does not contain the statement which would explicitly – as it was in the case of so-called Small Constitution – entrust the Marshal with the task of heading the work of the Sejm. If the legislator wanted to solve this problem on the level of the Constitution, limiting the scope of the autonomy of the chamber at the same time, he would do so in line with the solutions contained in the Small Constitution. There were no obstacles to it. Secondly, taking into consideration the principle of direct application of the provisions of the Constitution, the suggested interpretation of the following phrases used in Art. 110 § 2 of the Constitution: “preside over the debates of the Sejm” and “safeguard the rights of the Sejm” cannot be equivalent in terms of meaning to the term “head the work of the Sejm”. It is uniformly assumed that the imperative to directly apply the Constitution refers to its self-executing norms, i.e. such norms under which the scope of the rights and duties of the addressee of a legal norm may be established unambiguously. As it has already been said, the provision of Art. 110 § 2 of the Constitution is worded in such a way that enables the direct application thereof. The tasks contained therein are defined so precisely that on their grounds the Marshal may take certain actions. However, in my opinion, no. scope of the actions of the Marshal, defined by the said provision, gives the grounds for the statement that the legislator settled the issue of a single-person or collegial model of heading the work of the Sejm. In my opinion, the said problem was reserved for the judgement of the Sejm within the principle of its autonomy, which was guaranteed by the Constitution. Making use of this option, the Sejm equipped the Mar-

eds. L. Garlicki, A. Szmyt, Warsaw 2003, p. 213.

⁸ J. Mordwilko, *W sprawie struktury i kompetencji kierowniczego organu Sejmu w świetle Konstytucji RP*, “Eksperytyzy i Opinie Prawne. Biuletyn” 1997, no. 3, p. 65.

shal with the key managerial competencies by means of a thorough amendment to the rules regulations. Among them there are the following: endorsing legislative and resolution-making initiatives (after having consulted the presidium of the Sejm), safeguarding the progress and timely completion of the work of the Sejm and its bodies, establishing the agenda of the Sejm (after having consulted the Council of Elders), etc.

However, the decision of the Sejm on equipping the Marshal with the key managerial competencies did not include all the authorities concerning internal management. It should be pointed out that the presidium of the Sejm still has the right to interpret the Standing Orders of the Sejm (after having consulted the Rules and Deputies' Affairs Committee). It proves some inconsistency of the accepted solutions.

III. Constitutional regulation of the legislative process

Another problem connected with the direct application of the Constitution by the Sejm concerns the legislative process. The constitutional regulation referring to this matter is only general⁹. Very few provisions of the Constitution refer to the legislative process. It may be surprising that one of the most important functions of this body, next to a control function, is regulated by the Constitution in such a modest form. The guaranteed autonomy of the Sejm, in particular the regulative autonomy, results in the fact that the basic ruling body when it comes to the legislative procedure is the Sejm, because the fundamental part of the legislative procedure concentrates on this body. It means the transfer of rudimentary decisions as to its form to the level of a regulatory regulation.

When analysing the constitutional provisions on the legislative process, Art. 118 § 1 and 2 of the Constitution, which stipulate the circle of entities with a legislative initiative, should be primarily pointed out. The circle shall include: deputies, the Senate, the President, the Council of Ministers and a group of at least 100 thousand citizens having the right to vote in elections to the Sejm. Thus, the Constitution directly settled who has the right to sub-

⁹ S. Patyra, *Mechanizmy racjonalizacji procesu ustawodawczego w Polsce w zakresie rządowych projektów ustaw*, Toruń 2012, p. 258.

mit a bill to the Sejm, however, it did not contain any regulations on the manner of using legislative initiative, and in the case of the people's legislative initiative it referred to the act. When it comes to deputies, by using the plural the Constitution did not settle a certain number of deputies which may efficiently submit a bill. This regulation is specified more precisely in the Standing Orders of the Sejm¹⁰. The provisions of the fundamental law do not regulate the procedures for preparing and submitting a bill by the Senate and the Council of Ministers. The said legislative procedures have been respectively defined in the Rules and Regulations of the Senate¹¹ and in the Regulations on the work of the Council of Ministers¹², however the procedure for submitting bills by a group of citizens was regulated by the Act on Exercise of the Legislative Initiative by Citizens¹³. It seems that the analysed provision constitutes direct grounds for submitting a bill only by the President of the Republic of Poland.

The entities indicated in Art. 118 (at lesser or greater frequency) exercise the right, which is guaranteed to them by the Constitution. In accordance with doctrinal definition the right of legislative initiative is the right of the entity (indicated in the Constitution) to submit a bill with such a legal effect that the parliament should commence working on it. However, does the obligation of the Sejm to consider a bill corresponds to the constitutional right of a given entity? Is such a practice constitutional to keep a bill for years at the stage of the work of the Sejm so that a given bill can be covered by the discontinuation principle in relation to the work of the Sejm whose term of office expired? It is, of course, not about the case in which a bill was submitted at the end of the Sejm's term of office, so it was impossible to conduct the entire legislative procedure for objective reasons. I mean the situation when a bill is submitted on the first, second, or third year of the Sejm's term of office, but no. works are being carried on in relation to it, and finally it is covered by the discontinuation principle. A typical example would be a situation when in the Sejm of the third term of office, at the very beginning of legislative procedure, all the work on the four presidential bills on the states of emer-

¹⁰ The Standing Orders of the Sejm of the Republic of Poland (Dz.U. 2012, item 32).

¹¹ The Rules and Regulations of the Senate of the Republic of Poland (Dz.U. 2014, item 529).

¹² The Regulations on the work of the Council of Ministers (Dz.U. 2013, item 979).

¹³ Dz.U. 1999 no. 62, item 688.

gency was discontinued. Consequently, they were lying in the Sejm for 1423 days and finally they were covered by the discontinuation principle. Although no. provisions of the Constitution or of the Standing Orders of the Sejm impose directly on the Sejm an obligation to consider the submitted bill, however, the presented practice may thwart the right of the legislative initiative guaranteed by the Constitution¹⁴.

Efficient exercise of the right of the legislative initiative depends, inter alia, on meeting the formal requirements regarding a bill and justification attached thereto. In this field the regulations of the Constitution are extremely laconic. Article 118 § 3 of the Constitution only says: "Sponsors, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation". The adopted solution is justified. Taking into consideration the principle of the direct application of the Constitution, this element is a *sine qua non* requirement to admit a bill to the legislative procedure. The right of the Sejm (its body) to control in this respect the submitted bill corresponds to the obligation of the sponsor. In my opinion the importance of the issue concerned allows to state that the cited provision of the Constitution should be applied in a rigorous manner. Its *ratio legis* is beyond dispute. It should be emphasized that the presentation of the financial consequences of a bill implementation must be made at the moment of the exercise of the legislative initiative. The assumption resulting from Art. 118 § 3 of the Constitution should be a rationality constraint for further legislative work¹⁵. However, does parliamentary practice confirm this demand? And it is not only about the case when the calculated costs of a bill implementation are lowered on purpose, but also about practical, technical, and economical possibilities, firstly – to correctly calculate the costs by a sponsor, secondly – to correctly and reliably verify the presented data by the Marshal of the Sejm as a body authorized to formally supervise the submitted bills.

Continuing the deliberations on preliminary supervision of bills, in the context of the principle of the direct application of the Constitution, particular attention should be given to the procedure for the evaluation of the bills

¹⁴ P. Winczorek, *Bezpośrednie stosowanie Konstytucji RP w sejmowym postępowaniu legislacyjnym*, [in:] *Bezpośrednie stosowanie Konstytucji...*, p. 145.

¹⁵ A. Szmyt, *Elementy praktyki sejmowej pod rządami Konstytucji RP (1997–2007)*, Gdańsk 2008, p. 253.

with regard to their constitutionality. The provisions of the fundamental law do not directly provide for the ban on the Sejm's proceedings on the bill, which may be contrary to the Constitution. However, from Art. 7, 8 and 188 § 1 of the Constitution "it should be concluded that unconstitutional bills should not be admitted to the legislative procedure"¹⁶.

The procedure for the evaluation of a bill, when it comes to its legality, is regulated by the Standing Orders of the Sejm. The entity competent to make this evaluation is the Legislative Committee, which operates in this field upon the request of the Marshal of the Sejm. The Committee may decide by a majority of 3/5 of the votes that a bill is inadmissible. Here one question arises: does the evaluation of a given bill (conducted by the Committee), in the aspect of its conformity to the Constitution, constitute the direct application of its provisions?

Undoubtedly, the evaluation of a bill consists in comparing the solutions proposed in a bill to the provisions of the binding Constitution. However, is it only about a simple comparison of the literal wording of the confronted provisions, or about the consideration of its full content given to this provision by the Constitutional Tribunal in its judicature as well? So, is it about the consideration of certain values connected with the said provision of the Constitution? Obviously, it is not possible to present comprehensive analysis of all the possible cases, but as an example Art. 2 of the Constitution may be cited as it expresses the principle of a democratic state ruled by law. Should the evaluation conducted by the Committee not consider the full content of the said principle and consist in referring it to proposed statutory solutions? As it is known, the said principle consists of a number of detailed principles, among which essential is the principle of the citizen's trust in the state and the law established by the state. Relative freedom of the legislator in forming the material content of the law is limited by procedural aspects of creating law, the so-called principles of competent legislation, inter alia, the principle of determinacy of legal rules, the principle of appropriate *vacatio legis*, the principle of the protection of justly acquired rights, the principle of non-retroactivity, etc. Should the full content of Art. 2 of the Constitution be considered in the evaluation procedure of a bill, and do we deal with the realization of the principle of the direct application of the Constitution here?

¹⁶ P. Winczorek, op.cit., p. 143.

The Constitutional Tribunal took a position that Art. 8 of the Constitution imposes the imperative [...] to be guided, when creating law (including statutory law), not only by its procedural provisions, but also by the values which result directly from its regulations or which are essential for them [cf Ruling K. 26/96 – G.K.]. It concerns for example such values as: freedom of speech, freedom of assembly, integrity of the person, secrecy of correspondence [...]. Direct applicability of the provisions propagating the said values consists in them providing a guideline on positive statutory solutions (material, competence, organizational, procedural), as well as – very importantly – intransgressible barrier whose transgression would result in the unconstitutionality of a bill¹⁷.

In consideration of the above, it seems that the sphere of the activities of the Legislative Committee as the body of the Sejm should be treated as a sign of direct application of the provisions of the Constitution.

Following the aforesaid position of the Constitutional Tribunal, I believe that the managerial type of the application of the provisions of the Constitution by the Sejm should cover not only the literal wording of the provision, but also – in the cases which became the subject of the statement of the Constitutional Tribunal – the content and meaning given to this provision by the body.

The provision of Art. 119 of the Constitution is essential for the course of the legislative process. In the paragraph 1 of the cited Article the fundamental law settled that every bill must undergo the procedure of three readings in the Sejm. In the aspect of direct application, this provision does not give rise to any doubt. In accordance with the principle of the autonomy of the chambers, the Sejm in its Standing Orders decided on the component elements of each reading, as well as on the manner of their realization¹⁸.

Article 119 § 2 of the Constitution says that the right to introduce amendments to a bill in the course of its consideration by the Sejm shall belong to its sponsor, deputies, and the Council of Ministers. Problems which arise in connection with the application of the cited provision concern the concept and material scope of amendments, the deadline for submitting amendments, and finally the entities authorized to submit them.

¹⁷ Ibidem, p. 147.

¹⁸ B. Szepietowska, *Proces ustawodawczy*, [in:] *Parlament. Model konstytucyjny a praktyka ustrojowa*, ed. Z. Jarosz, Warsaw 2006, p. 107.

The Constitution does not define the concept of amendment. The Standing Orders of the Sejm do not do it either. Meanwhile, this issue is very important due to the constitutional imperative to make the fundamental content of a future bill undergo the full procedure of three readings. On the one hand, it is hard to accept the practice of submitting the amendment which *de facto* is a new bill; on the other hand, however, there are no obstacles to propose a new version of a bill, which is far from its original content, in the report of the committee. If it occurs in the right moment of the legislative procedure, i.e. during the committees' work, between the first and second reading of a bill, it does not threaten the constitutional norms. As the stage is so early that there is enough time for serious reflection and consultations. Nevertheless, submitting the amendment which *de facto* constitutes a new bill in the course of the second reading or after the end thereof should be treated as the circumvention of the provision on the necessity for a bill to undergo three readings. Additionally, such a state of affairs would blur a difference between the legislative initiative and the right to submit an amendment. The admissibility of an amendment depends on the stage of the Sejm's work when it is submitted and its scope. Pursuant to Art. 119 paragraph 3 of the Constitution the Marshal of the Sejm may refuse to put to a vote any amendment which has not been previously submitted to a committee. The fact that the Marshal of the Sejm is equipped with this kind of authority on a constitutional level proves the importance and significance of the procedural aspects of the legislative process.

In addition, the content of the provision of Art. 119 § 4 of the Constitution, in which the legislator guaranteed that the sponsor may withdraw a bill in the course of legislative proceedings in the Sejm until the conclusion of its second reading, connects with the discussed issues as well. On this stage of legislative work, it is already visible what will be the form of a future bill. If due to the submitted amendments, a bill was modified so deeply that a sponsor cannot identify with the content thereof any more, he is allowed to withdraw a bill and thus close the legislative process. In my opinion this provision does not give rise to any doubts from the point of view of the principle of the direct application of the Constitution.

I cannot see any problems with the direct application of the provisions of Art. 121 § 1 and Art. 122 § 1 of the Constitution, i.e. the provisions saying

that a bill passed by the Sejm shall be submitted to the Senate by the Marshal of the Sejm, and after considering his position – to the President of the Republic of Poland. However, the issues regulated in Art. 121 § 2 and 3 of the Constitution are worth noting. The first of the cited provisions provides for the participation of the Senate in the legislative process, giving him the possibility to adopt amendments; and the second one regulates the procedure for considering the position of the Senate by the Sejm.

The Constitutional Tribunal has repeatedly dealt with the issue of the amendments submitted by the Senate. It pointed out, *inter alia*, that the Senate may only adopt the amendments to a bill amending something, but not to a bill which has been amended. Accepting another concept would constitute the circumvention of the constitutionally established procedure for considering bills¹⁹.

The practice shows that you cannot exclude a situation in which the Senate adopts the amendments which exceed the scope of the amending bill. It raises one problem – how should the Senate behave? Is it entitled to ignore them, not to put to a vote the Senate's amendments, which in their scope exceeded the subject matter of the amending bill? Or should it consider all the submitted amendments, and if it decides that some of them exceed the scope of a bill, reject them by an absolute majority of votes? The questions asked concern directly the application of Art. 121 § 3 of the Constitution. Pursuant to the said Article: "A resolution of the Senate rejecting a bill, or an amendment proposed in the Senate's resolution, shall be considered accepted unless the Sejm rejects it by an absolute majority vote in the presence of at least half of the statutory number of deputies".

This problem was considered by the Constitutional Tribunal which in the Ruling of 22 September 1997 stated that "in order to adopt the amendments proposed by the Senate, the Sejm should always consider them and finally deputies should vote on particular amendments. Adopting the amendment of the Sejm under the constitutional norm is connected not with the failure of the Sejm to pass a resolution, but with the failure of the Sejm to reject the Senate's amendment by an absolute majority of votes"²⁰.

¹⁹ P. Winczorek, *op.cit.*, p. 145.

²⁰ K. 25/97, OTK ZU 1997, no. 3–4, item 35.

The position of the Tribunal influenced parliamentary practice. The Sejm puts to a vote all the Senate's amendments, while if it is stated that they exceed the scope of the amending bill, their rejection is recommended²¹.

In the context of the above deliberations, particular attention should be paid to the statement of the Constitutional Tribunal on the Sejm's adopting the inadmissible amendment of the Senate. In the Ruling of 24 June 2002 it said: "[...] adopting by the Sejm (under Art. 121 paragraph 3 of the Constitution) the inadmissible amendments proposed by the Senate – in view of the failure to reject them by an absolute majority of votes – does not lead to the validation of the breached manner of the legislative procedure"²².

Another issue, in the context of the principle of the direct application of the Constitution by the Sejm, is a normative construction of the so-called urgent mode. Its essence is to accelerate the legislative procedure in the parliament and, thus, to give a priority to bills submitted by the Council of Ministers. The Constitution devotes one Article to this institution. Pursuant to this Article the Council of Ministers may classify a bill adopted by itself as urgent, which obliges the parliament to examine such a bill in a separate procedure. On the level of the Constitution this special procedure shall mean that the time period for the consideration of a bill by the Senate shall be 14 days and the period for its signature by the President of the Republic shall be 7 days. The remaining issues, pursuant to the principle of the autonomy of the chambers, are regulated in the Rules and Regulations of the Sejm and Senate. An important role, when it comes to the realization of the urgent mode, is played by parliamentary practice.

What results for the Sejm from the content of Art. 123 of the Constitution in the aspect of the direct application of the Constitution? In my opinion, firstly, the necessity to define in the Standing Orders of the Sejm the procedure for examining the bills which were indicated by urgency clause, and secondly – the necessity to verify the project which is urgent with regard to its legality and application.

The appropriate regulations contained in the Standing Orders of the Sejm are the implementation of the constitutional provision. Not presenting them

²¹ B. Szepietowska, *op.cit.*, p. 115.

²² K. 14/02, OTK ZU 2002, no. 4A, item 45.

precisely, it should be stated that their purpose is to shorten the procedure on particular stages of work on a bill in the Sejm.

I think that when it comes to the direct application of the Constitution it is important that the Sejm is bound by urgency clause, except for a situation when this clause is appended to a bill concerning the subject matter excluded from urgent mode, which in the light of Art. 123 paragraph 1 of the Constitution relates to tax bills, bills concerning the election of the President of the Republic of Poland, the Sejm, the Senate, territorial self-government authorities, bills regulating the system and the competency of the public authorities, as well as the codes. Adopting urgently a bill regulating the subject matters excluded by Art. 123 paragraph 3 of the Constitution might result in challenging its legality before the Constitutional Tribunal. Therefore, the role of the Sejm and its bodies is to supervise an urgent bill with regard to its application. However, if the urgency clause is appended to a bill which does not concern the matters excluded from urgency, it should be assumed that the Sejm and its bodies are bound thereby²³.

Taking into consideration the essence of the discussed institution, we should agree with the position that appending the urgency clause to a bill should stimulate the speed of the legislative work. There has been a view in the literature that appending the urgency clause suggests that the parliament is limited to interfere in the content of the proposed solutions²⁴. This view should be treated as accurate, although it does not directly result from the provisions of the currently binding Constitution.

IV. Closing remarks

The imperative to directly apply the provisions of the fundamental law with regard to the Sejm means both applying the provisions stipulating its organisation, rules of procedure, and subject of activity (which constitute the element of constitutional matter), as well as the remaining provisions, in particular those expressing the constitutional principles and values.

²³ S. Patyra, *op.cit.*, p. 230.

²⁴ *Ibidem*, p. 223.

Art. 8 of the Constitution is not indispensable to apply the provisions stipulating the internal structure of the Sejm, its rules of procedure, and subject of activity. The Sejm, as a direct addressee of those norms, is obliged to apply them regardless of the imperative resulting from the said provision. The provisions regulating the said matter are generally precise and they do not give rise to any doubts in the context of their direct application. However, among them there are also the provisions which are ambiguous, and the application of them requires using the methods of systemic and/or functional interpretation. Finally, there is a group of provisions, the application of which requires their development and elaboration on a regulatory level. It is determined by the content of Art. 112 of the Constitution. So the Standing Orders of the Sejm shall definitely form their normative content.

For the Sejm the content of Art. 8 of the Constitution first of all has a meaning in the aspect of the application of the remaining provisions of the fundamental law (i.e. those which do not refer to the internal structure, rules of procedure, and subject of activity of the Sejm). It must take them into consideration and apply them through the realisation of its institutional functions. It should be emphasized that a substantial part of those provisions is of special nature, which is expressed, *inter alia*, in the fact that they are formulated on a quite high level of generality. Therefore, their real normative content is established through constitutional jurisdiction. For that reason the direct application of the provisions of the Constitution by the Sejm and its bodies requires taking into the consideration the case – law of the Constitutional Tribunal.

Literature

- Działocha K., *Bezpośrednie stosowanie Konstytucji RP (stan doktryny prawa)*, [in:] *Bezpośrednie stosowanie Konstytucji Rzeczypospolitej Polskiej*, ed. K. Działocha, Warsaw 2005.
- Garlicki L., *Regulamin Sejmu w systemie źródeł prawa (na tle orzecznictwa Trybunału Konstytucyjnego)*, "Przegląd Sejmowy" 1994, no. 4.
- Garlicki L., *Uwaga do Art. 110*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, T. 2, ed. L. Garlicki, Warsaw 2001.

- Mordwiłko J., *O dwóch przypadkach interpretacji konstytucji w świetle praktyki parlamentarnej*, [in:] *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*, eds. L. Garlicki, A. Szmyt, Warsaw 2003.
- Mordwiłko J., *W sprawie struktury i kompetencji kierowniczego organu Sejmu w świetle Konstytucji RP*, "Ekspertyzy i Opinie Prawne. Biuletyn" 1997, no. 3.
- Patyra S., *Mechanizmy racjonalizacji procesu ustawodawczego w Polsce w zakresie rządowych projektów ustaw*, Toruń 2012.
- Szepietowska B., *Proces ustawodawczy*, [in:] *Parlament. Model konstytucyjny a praktyka ustrojowa*, ed. Z. Jarosz, Warsaw 2006.
- Szmyt A., *Elementy praktyki sejmowej pod rządami Konstytucji RP (1997–2007)*, Gdańsk 2008.
- Winczorek P., *Bezpośrednie stosowanie Konstytucji RP w sejmowym postępowaniu legislacyjnym*, [in:] *Bezpośrednie stosowanie Konstytucji Rzeczypospolitej Polskiej*, ed. K. Działocha, Warsaw 2005.