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**THE EUROPEAN CONSTITUTIONAL TREATY FROM THE POINT OF  
VIEW OF POLISH CONSTITUTIONAL LAW**

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## 1. Polish Constitutional Traditions

The first Polish Constitution signed on May 3, 1791 was also the first constitution in Europe and only the second in the entire world, after the Constitution of 1787 in the United States of America.

Although in the XVIII century Polish political significance diminished in Europe, due to the efforts of King Stanislaw August Poniatowski, elected in 1764, its intellectual development rose. The thirty-two year old king was highly educated and extremely intelligent. Thanks to his intellectual activity, the period of his ruling is known as the Period of Enlightenment. During his ruling the Polish Parliament created a Commission of National Education, which became the first Ministry of Public Education in Europe, and on September 1787, Polish Parliament began preparing the Constitution. The debate lasted four years. On May 3, 1791, the Polish Constitution was signed. After a short presentation of the project, the Constitution was voted in. It included the founding of a hereditary monarchy, the abolition of the "liberum veto"\* , an increase of the rights of the cities and the middle class, protection of the peasants by the courts, creation of a government consisting of the ministers nominated by the king, but responsible to parliament.

According to the Constitution of May 3, the parliament remained the main governmental organ and the superior representative of the nations. The king became the head of government as chairman of the "Guardian of the Law". The position of the king was approximately that of the position of the President of the United States. The acts of the king needed countersignature by one of the ministers. In case of a violation of law, the cosigning minister was responsible to the Parliamentary Court, and in case of political directives, before the King and Parliament. Thus Poland was the first country in the world in which the parliamentary responsibility of the ministers was regulated by law. The changes enacted by the Constitution also reformed the rights of the nobility and municipal judicature. In the nobleman's judicature, uniform courts of first instance were introduced (the gentry courts) and in the municipal judicature, the associate courts and the courts of appeals were renewed.

The Constitution of 3 May was a great, progressive legal act. Its greatness has first of all a historical dimension, as the tragic fate of Poland prevented the realization of its principles and the institutions which it sought to establish. Although the ideas of the Constitution were not implemented in real life, its values are also important nowadays. The further development of the Polish constitutions was dictated by the history of Poland. During the time when Poland was partitioned by Prussia, Russia and Austria, constitutional acts with limited territorial range were created. They reflected the position of Poland, which at that time was subordinate to other imperial powers.

Among those acts were:

- *The Constitutional Act of the Principality of Warsaw*, introduced by Napoleon I the Emperor of France on July 22, 1807,

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\* The "liberum veto" was the legal right of each parliamentary deputy to defeat any issue being considered by his sole veto or to dissolve parliament. Historically, it wreaked havoc in Poland by repeatedly blocking major political decisions. – The editor.

- *The Constitution of the Free City of Krakow*, introduced by Prussia, Russia and Austria as "the Additional Treaty" of the Viennese Congress on May 3, 1815,
- *The Constitutional Act of the Polish Kingdom*, introduced by Alexander I, Tsar of Russia, on November 27, 1815.

On November 11, 1918, the day when Polish independence was regained, a new chapter of Polish constitutions was opened. On February 20, 1919 Parliament voted in the so-called "Little Constitution" which appointed Josef Pilsudski to the post of the Chief of the State. On March 17, 1921 the "Constitution of the Republic of Poland" was proclaimed. Later on, that constitution was replaced by the "Constitution of the Republic of Poland" which was adopted by the National Assembly on April 23, 1935.

After the Second World War, the "Constitutional Act of February 19, 1947" was introduced – it was also called the "Little Constitution". The Constitution regulated the political system and the role of the main governmental organs. It did not regulate the rights and freedoms of the persons and citizens. Its articles were linked to the rules of Polish Parliament. The Parliament was a superior organ, whose members were elected during universal and direct elections. Other political organs came into being either directly (the Presidency) or indirectly (the government) by way of Parliament, and were under the Parliament's control.

From the date of introduction of the Constitution of 1947, its articles were violated by the political powers. The government published decrees that had the force of a statute and violated the constitutional rules which were never obeyed by executive acts. The Constitution of 1947 ceased to be binding when in July 22, 1952, the new "Constitution of the Republic of Poland" was introduced. This constitution was in force for 40 years, and part of its articles survived until 1997 when the present Constitution was brought into life. The Constitution of 1952 was based on the Soviet example. It had political and ideological character. The rights and freedoms of a person played a political role. The Constitution of 1952 was never accepted by Polish society. Although it was amended many times from 1989-1991, Poland's political transformation was based on the Constitution of 1952. On October 17, 1992, a constitution concerning the mutual relations between the legislature and the executive of the Republic of Poland and the local governments was established (the Little Constitution). It amended the main articles of the Constitution of 1952 and formed a legal basis of the Polish state between 1990 and 1997.

As I mentioned, the Polish constitution of 1952 was based on the Soviet example. With the amendments it underwent in the post-socialist period, it was in force until the new Constitution of 1997 came into being. Obviously, the new Polish Constitution thus has significant symbolic value as a complete break with the past era.

I would like to tell you a joke in order to illustrate the nature of the Constitution of 1952 and the dismal way in which it and other satellite constitutions like it were seen by the people, who realized that its contents were no commitment to the rule of law, but merely nominal. The hero of the joke is Hungarian, but he could equally well be Polish:

A hungry Hungarian traveler walks into a shabby restaurant in Moscow, sits down and begins to study the menu. He asks the waiter to bring him some pork chops.

- We don't have any, answers the waiter.
- Well then, I'll have the meatballs.
- We don't have any either.
- How about liver?

- No, we don't have that either.

The annoyed customer finally asks in exasperation, - Am I reading the menu or the constitution?

The National Assembly introduced the present Constitution - which I will discuss further in the context of the European Constitutional Treaty - on April 2, 1997. It was then confirmed by national referendum. The Constitution was introduced due to the compromise of various political groups. From 1993-1994, eight new constitutional projects were produced. The political groups represented in parliament presented five of them, one was a project of the President, one of the Senate, and one was a so called "citizens' project" and was presented by NSZZ Solidarność. The task of creating one project out of these five was charged to the Constitutional Commission. After three years of work and a number of amendments submitted by the President, the Commission introduced the final draft of the Constitution to the National Assembly. The National Assembly accepted it. Thus the presently binding "Constitution of the Republic of Poland" came into force. It represents a compromise between different political groups, which is one of its important characteristics. It is a modern legal act. It was introduced when Poland was still on its way towards accession to the European Union.

Poland is a member of the European Council and was one of the signatories of the *European Convention on Human Rights and Basic Freedoms*. The Polish Constitution contains a catalogue of rights and freedoms that serve not only Polish citizens. The Constitution also gives various rights to the national minorities. It points out when and under what circumstances those rights can be limited. The articles of the Constitution can be put in practice directly. The Constitution has a political, not an ideological character. It also presents the rights of an individual as a human being. It provides that the state protect those rights and freedoms and grant their observance. It foresees that the law play a significant role in the life of the society and of the state. Ratified international agreements in the hierarchy of the sources of law are on the same level as the statutes. When there is an irreconcilable conflict between a ratified international agreement and a statute, the international agreement prevails. The Constitutional Tribunal makes the final decision on whether a statute complies with the Constitution.

## **2. Values and Freedoms in the Constitution of the Republic of Poland and in the Treaty Establishing a Constitution for Europe**

While assessing the articles of the Constitutional Treaty of the European Union from the point of view of the Polish Constitution, I will concentrate on the articles concerning the protection of the fundamental rights of the individual and on general values. I would like to show that those rights and values are essentially the same.

Let me at first say a few general remarks about the Polish Constitution. The sovereignty of the nation is understood as a politically rather than an ethnically based entity, it is adopted as the starting point for the system of government of the Republic of Poland. That principle is instantiated in a wide catalogue of civil rights. The Constitution clearly distinguishes three categories of individual freedoms: personal, political, and economical. The limitation of personal freedoms and rights may be imposed only by statute, and in case of doubt, interpretation of any of such statute should, naturally, be derived from the provisions of the Constitution. The concept of direct democracy is reflected in two procedures included in the Constitution, namely a referendum and the legislative initiative of the citizens (art. 118.2) A referendum has a facultative nature and may

concern certain constitutional changes or "matters of particular importance of the state". A state ruled by law includes the provision of lawfulness (art. 7) constitutionalism (art. 8), and a declaration of respect for international law (art. 9) which should be linked to the precedence of ratified international agreements over statutes (art. 91).

The above-mentioned principles find their further expression in more detailed constitutional provisions and statutes, namely the principle of legality in provisions. The concept of separation of, and balance between powers is a starting point for establishing the structure of state authorities. The requirement of a balance of powers differs from similar regulations contained in previous constitutions, which only declared a separation of powers. The requirement of a balance of powers means that competencies of the same weight are conferred on each power, and it also opens the way for mutual "checks" on the powers. The Constitution recognizes the bicameral character of Polish Parliament. Rights conferred on both chambers (the Sejm and the Senate) are equal only in respect to amending the Constitution (art. 235, para. 2) and adoption of a statute granting consent for some qualified types of international agreements (art. 90). Judicial power is composed of common courts, the Supreme Court, administrative courts and the Highest Administrative Court, military courts, the Constitutional Tribunal, and the Tribunal of State. Under the Constitution there exists the National Council of the Judiciary whose members are not only chosen by judges but also by Parliament and the Executive.

In Polish constitutional tradition, universal values have always been given the greatest attention. In the above-mentioned Constitution of 1921, which was established after more than one hundred years of the absence of Polish statehood, all democratic guarantees were granted. According to the constitutional rules of 1921, on its territory, the Republic of Poland ensured the full protection of life, freedom and property without any differences based on nationality, language, race, origin, or religion. The equality of rights was constitutionally protected, everybody was entitled to express their thoughts and convictions freely. All the citizens were considered equal before the law. Freedom of the press was guaranteed, as well as freedom of conscience and confession. Every citizen had the right to retain their nationality, their identity and their mother tongue.

The Constitution of Poland from 1997 states, *inter alia*, that the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice. A social market economy, based on free economic activity, private ownership, solidarity, and dialogue and cooperation between social partners, shall be the basis of the economy. Ownership and the right to succession shall be protected. Churches and other religious organizations shall have equal rights. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to a person's outlook on life and shall ensure their freedom of expression in public life. The relationship between churches and other religious organizations based on the principle of respect for their autonomy and the mutual independence of each within its sphere, as well as on the principle of cooperation, form the individual and the common good.

Chapter II of the Polish Constitution is entitled: "The Freedoms, Rights and Obligations of Persons and Citizens." It is divided into several general principles: Personal Freedoms and Rights, Political Freedoms and Rights, Economic, Social and Cultural Freedoms and Rights, and Means for the Defense of Freedoms and Rights. According to this chapter, the inherent and inalienable dignity of a person shall constitute a source of freedoms and rights of persons and

citizens. It shall be inviolable. An individual's freedom shall receive legal protection. Everyone shall respect the freedom and rights of others. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever. Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland. The Republic of Poland shall ensure the legal protection of the life of every human being. No one shall be subject to scientific experimentation, including medical experimentation, without his voluntary consent. No one may be subject to torture or cruel, inhuman or degrading treatment or punishment. The application of corporal punishment shall be prohibited. Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute. Only a person who has committed an act prohibited by a statute in force at the moment of committing the act, which latter is subject to penalty, shall be held criminally responsible. This principle shall not prevent culpability of any act, which, at the moment of its execution, constituted an offence according to international law. Anyone against whom criminal proceedings have been brought shall have the right to defense at all stages of such proceedings. Everyone shall be presumed innocent of a charge until their guilt is determined by the final judgment of a court. Everyone has the right to a fair and public hearing of their case without undue delay, before a competent, impartial and independent court. Freedom of privacy and communication shall be ensured. The inviolability of the home shall be ensured. No one may be obliged, except on the basis of a statute, to disclose information concerning his person. Freedom of movement as well as the choice of place of residence and sojourn within the territory of the republic shall be ensured to everyone. Everyone may freely leave the territory of the republic. Freedom of conscience and religion shall be ensured to everyone. The religion of a church or other legally recognized religious organization may be taught in schools, but other people's freedom of religion and conscience shall not be infringed thereby. The freedom to express opinions, to enquire and to disseminate information shall be ensured to everyone. Freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone. Freedom of association shall be guaranteed to everyone.

According to the Polish Constitution, everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interest of another person - with the latter's consent - to organs of public authority. Everyone, on an equal basis, shall have the right to, and enjoy the legal protection of ownership, the right to succession, and other property rights. The constitution guarantees to everyone the freedom to choose and to pursue an occupation, to choose their place of work and to enjoy the right to safe and hygienic conditions of work. An employee shall have the right to statutorily specified days free from work as well as annual paid holidays; the maximum permissible hours for work shall be specified by statute. Everyone has the right to health protection, the right to education. Education to 18 years of age is compulsory. Education in public schools shall be free of charge. The protection of the rights of the child is ensured. Hence everyone shall have the right to demand from organs of public authority that they defend children against violence, cruelty, exploitation, and actions which undermine their sense of morality.

The State, in its social and economic policy, shall take into account the good of the family. Families finding themselves in difficult material and social circumstances - particularly those with many children or single parents - shall have the right to special assistance from public authorities. Before and after birth, a mother shall enjoy this same right to assistance, to the extent specified

by statute. In accordance with statute, public authorities shall provide aid to disabled persons to ensure their subsistence and adaptation to work and to social communication.

Everyone shall have the right to compensation for any harm done to them by any action of any organ of public authority contrary to the law. Everyone whose constitutional freedoms or rights have been infringed upon shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or other normative act upon which basis a court or an organ of public administration has made a final decision on someone's freedoms or rights or obligations as specified in the Polish Constitution. Everyone has the right to appeal to the Commissioner for Citizens' Rights (ombudsman) for assistance in protection of their freedoms or rights infringed upon by organs of public authority.

The Polish constitutional guarantees mentioned above are also characteristic of the spirit of the European Constitutional Treaty, in that they concern not only Polish citizens. In the Polish Constitution there is a distinction between the concept - "every person" and the concept - "citizen". A "citizen" is also "every person" but not "every person" is at the same time a "citizen". That is why it is important to point out that the guarantees concerning the fundamental rights of a person and the general values contained in the articles of the Polish Constitution concern every person who resides in the territory of Poland whether or not that person is a citizen of Poland or of an other country or is a stateless person. It was obvious for the legislators of the Polish Constitution that the fundamental rights and guarantees concern every person regardless of his or her nationality, race, or ethnic origin. That is because these are the rights of every human being - not only of Polish citizens. Thus the Polish Constitution complies with the Constitutional Treaty in the context of the values concluded in it. According to these, the Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. Such values are also expressed in the Polish Constitution and comply with the rules common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination. Let me repeat again article 32 of the Polish Constitution: "All persons shall be equal before the law. All persons have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever."

The Union's objectives, inter alia - to promote peace and its values, to offer citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted, with the guarantee to respect the cultural and linguistic diversity of its societies and ensure that Europe's cultural heritage is safeguarded and enhanced, are in accordance with the general tendency of the Polish Constitution. What is of special significance from the point of view of the Constitution of Poland is that in its relations between the Member States, the Union shall respect the national identities of the Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. Equally important is that it shall respect their essential state functions, including those for ensuring the territorial integrity of the state, and for maintaining law and order and safeguarding internal security.

The general stipulations and ideas of the Polish Constitution fully correspond with Part II of the Treaty (the Charter of Fundamental Rights). For instance, human dignity according to article 1 of the Charter is inviolable. It must be respected and protected. According to art. 30 of the Constitution of Poland, "The inherent and inalienable dignity of a person shall constitute a source of

freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities." The right to the integrity of the person is guaranteed in the Polish Constitution in accordance to art. II-63 of the Treaty.

In the majority of its guarantees, the Polish Constitution refers to the norms included in the appropriate statute or EU legislation. For example, the protection of personal data is included in the Statute about the Protection of Personal Data dated September 29, 1997. Some of the norms included in that statute are based on art. 4 of the Directive 95/46/ UE Parliament and Council from October 24, 1995.

The Polish statutes about trade unions and the organizations of employees dated from May 21, 1991 are in accordance with the freedom of peaceful assembly and participation in such assembly as guaranteed in the Constitution and the corresponding statute. The freedom of artistic creation and scientific research as well as the dissemination of the fruits thereof, and the freedom to teach and to enjoy the products of culture are ensured to everyone in art. 73 of the Polish Constitution. The freedom to choose an occupation and the right to engage in work is regulated by the Labor Law Code and other statutes connected to this Code. In the Labor Law Code's general principles, the duty of an employer to protect the dignity and other personal interests of employees is included. The breach of this duty gives the employee the right to void a contract and to get compensation. The good name and other personal rights of an individual and the violation of personal dignity is under the protection of the Civil Code, which foresees the right to compensation in case of moral injury. If such an injury happens to an employee, he or she has the right to compensation on the basis of Labor Law and the Civil Code from the employer, who is also responsible on the basis of a minor offence.

Polish Labor Law strictly forbids any kind of discrimination, direct or indirect. The Council Directive 2000/78 /EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation is included in the Polish Labor Code, as well as the others directives concerning employment and occupation. The Directive 2000/43/EC/6 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is included as well. On January 1, 2002, the Council Directive 76/207/EEC of February 9, 1976 on the implementation of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions, was implemented in the Labor Law Code.

The protection of the family and the disabled is given in a set of statutes. Among them are the statutes dealing with the system of social insurance and social protection such as the statute of June 27, 2003 about social annuity, the statute dated November 28, 2003 about family benefits, and the statute dated March 12, 2004 about social and welfare assistance. The statute dated July 2, 2004 regulates the freedom of economic activity. All the above-mentioned laws are in accordance with the Polish Constitution and the Constitutional Treaty as far as fundamental rights are concerned.

Of course, Polish legislation does not only refer to EU law, but complies to international standards. For instance, in 1998 Poland adopted the Council of Europe's Social Charter in its main part. As far as protection in the event of removal, expulsion and extradition is concerned, Poland applies the Geneva Convention about the status of refugees from July 28, 1951. Since September 1, 2003 we have a separate statute about the protection of foreigners on the territory of Poland.

Two instances are foreseen for administrative proceedings for foreigners seeking help on Polish territory. Foreigners have open access to the administrative court in case they do not agree with an administrative decision.

### **3. The Discussion about the European Constitutional Treaty and the Constitution of the Republic of Poland.**

I would like to draw your attention to a recent conference held at the University of Toruń entitled "The Polish Constitution of 1997 and Polish Membership in the EU". Reference to this conference is useful in pointing out some relevant constitutional regulations. The whole discussion can be considered from the point of view of the compatibility of the Polish Constitution and the Constitutional Treaty. Let me quote some of the opinions expressed at this conference:

"It may be said that, of course, the new Polish Constitution is a very important achievement in comparison with the previous state and character of constitutional regulation. It embodies many good solutions favorable for human rights. But on the other hand, there are within the constitution some loopholes and shortcomings, as well as inconsistencies with international standards, which can serve as grounds for abusive tendencies tending to etatism and parliamentarism, and which can be exploited at the cost of full and effective enjoyment of human rights in Poland."(Tadeusz Jasudowicz).

"We can state that the Constitution complies with the requirements of fundamental law. It provides the conditions for the creation of the rule of law. By protecting the competence of the authorities, it enables the evolution of the category of sovereignty and gives a legal framework for EU membership". (Jerzy Menkes)

Another problem was taken up when analyzing the duty of fidelity to the Republic of Poland as described in article 82 of the Polish Constitution and its compatibility with the new obligations of Polish citizens resulting from membership in the European Union. The constitutional duty of fidelity to the Republic of Poland was considered in relationship to European Community law. Some disapproval of the present expression of the duty of fidelity to the Republic of Poland in the constitution notwithstanding, one author (Malgorzata Kozuch) came to the conclusion that neither the present wording of the duty of fidelity, nor the form of its expression collide with the integrative intentions of Poland in its relationship to the European Union.

Under article 76 of the Polish Constitution, public authorities shall protect consumers, customers, employers and employees against activities threatening their health, privacy, and safety as well as against dishonest market practices. The scope of such protection shall be defined by statute. According to E. Łętowska, the main thesis of this article is to establish compatibility between Polish consumer law and the consumer law of the EU. "As a consequence, in respect to the manner of judicial interpretation of law, the development of Polish consumer law should be determined by the axiology, contents and subject matter of Community consumer law." To quote Janina Ciechanowicz, "The whole of art. 76 is written in the context of European consumer law. Possibilities of using the European *acquis communautaire* in the interpretation process as well as the necessity of adjusting Polish law provisions to European standards are accounted for. "

Leszek Mering observes a point in which the Polish Constitution leaves room for adjustment to the shared competency foreseen by the Constitutional Treaty in regards to environmental

protection. "Environmental protection has been regulated in Polish constitutions before and in the Constitution in force since 1997. Art. 31.3 of the Constitution in force established the possibility of limiting some constitutional freedoms for the purpose of environment protection. These limitations may be introduced provided that they stem from law, are in accordance with the foundations of a democratic state and do not breach fundamental rights and freedoms. In art. 68.4 of the Constitution, public authorities are obliged to run such policy as would assure ecological security. Art. 74.3 establishes the right to information about the state of the environment and its protection and in point 4, imposes the obligation on public authorities to support activities taken by citizens to protect and improve the condition of the environment. The protection of the environment is also a duty of everyone. These rules create the foundation of common protection of the environment."

Presently there is a lot of discussion going on around the European Constitutional Treaty. The majority of Polish constitutionalists are of the opinion that the ratification of the Constitutional Treaty has to be the natural consequence of Polish membership in the EU. In his speech held at the beginning of the academic year at Warsaw University, Prof. Piontek said that one of the main ideas which Europeans have stood for for ages has been the vision of unity of the whole community. From the dusk of the Roman Empire to the Enlightenment, the vision of "Communita" has been a beacon. He mentioned the treaty of 1713 prepared by priest Charles Castel de St. Pierre, asking European rulers to organize a federation as a guarantee for permanent peace on our continent. As far as the Constitutional Treaty is concerned, professor Piontek considers two requisites to be essential: First, certain areas must be unambiguously separated and reserved as the exclusive competence of the Member States. Second, the Constitutional Treaty must be ratified by all the Member States, as has been the practice with the various treaties to date. He underlined that, as a rule, a "constitution" is an institution of public law created by an individual state. In its broader meaning however, a "constitution" may be the legal acts of the highest range in any legal order. These serve to define the system of values on which the larger order, its rules and goals, fundamental rights and duties, the main political organs and their competencies, and the instruments which serve to realize these competencies are included. So there is no need to create one European nation as a requisite to the Constitutional treaty. The treaty can serve the Member States with respect to their multiplicity.

According to professor Michal Czapliński (Institute of Public Affairs), Polish public opinion recognizes that the European Constitutional Treaty has not been written against Polish interests. Besides some caveats worthy of discussion, it is a well-prepared document and its entry into force will be of benefit both to European integration and to Poland. Considering this, one might ask, what objections might arise against the Constitutional Treaty in Poland?

The complicated history of Poland could be one of the reasons why the Polish nation could be against the ratification of the Constitutional Treaty. Polish society attaches importance to the national tradition and to Polish culture, which is understandable due to fact that Poland was deprived of its statehood and national identity for many years. During the period between 1939 and 1989, and before that period for 120 years, the Polish nation concentrated on the fight to keep tradition and culture alive. I must emphasize that during the time of Poland's partition, there was every reason for Polish identity to vanish, but it did not – instead it developed and grew stronger. That is why some part of Polish society could be against the values contained in the Constitutional Treaty, although in fact those values do not threaten either our national

identity, the sovereignty of the country, or our tradition, culture or religion. Poland was one of the adherents of the "invocation of God", it argued for the inclusion of Christian values in the preamble of the Treaty, which finally did not prevail. This fact might have an influence on the results of the referendum.

#### **4. The Polish Referendum about the European Constitutional Treaty**

The ratification of the European Constitutional Treaty will be decided in a nationwide referendum. According to article 125 of the Polish Constitution, a nationwide referendum may be held with respect to matters of particular importance to the state. The right to order a nationwide referendum shall be vested in the Sejm,\* to be taken by an absolute majority of votes in the presence of at least half of the statutory number of deputies, or in the President of the Republic with the consent of the Senate given by an absolute majority vote taken in the presence of at least half the statutory number of senators. The particulars about referenda are included in the statute dated March 14, 2003 about nationwide referenda. The result of the nationwide referendum shall be binding if more than half of the number of those having the right to vote have participated in it. Protest against the validity of a referendum can be taken to the Supreme Court within seven days. Through resolution, the Supreme Court has the power to determine the validity of a nationwide referendum. Such a national referendum is foreseen for the implementation of the European Constitution. The decision (resolution) about the validity of a nationwide referendum belongs to the Chamber of Labor Law, Social Security and Public Affairs of the Supreme Court. It takes the resolution after having considered all eventual objections in panels of three judges. The resolution has to be taken within 60 days from the day when the State Election Commission officially publishes the results of the referendum. The Supreme Court resolution has to be submitted immediately to the President of the country, to the presidents of the Sejm and the Senate, to the Prime Minister and published in an official journal.

In spite of general speculation about the outcome of a possible Polish referendum on the Constitutional Treaty, Poland's decision is not the most risky one looming on the European horizon. It was only in 2003 that Poland mobilized its population in a referendum in favor of Union membership. Since accession to the Union in Mai 2004, surveys have shown increasingly positive public opinion. The more pressing question is currently the outcome of a French referendum at the end of May, and the consequences that it could have in influencing public opinion in other Member States.

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\* One of the two chambers of the Polish Parliament (- the editor).