

Course: State and Law Studies

Field of Study: Internal Security

Form of classes and number of hours: Lecture 15 h, seminar 30 h

Number of ECTS credits: 4

Learning outcomes:

Student:

- Knows the basic definitions and terms in state and law studies.
- Knows the state and legal system.

Skills:

- Uses scientific categories in the field of research on the state and law.
- Is familiar with the mechanisms of the functioning of the state and the principles of lawmaking.

Social competences:

- Promotes the political and legal culture in the surrounding social environment.

Evaluation methods of learning outcomes:

Lecture – oral exam, Seminar: written credit – evaluation criteria:

ndst (unsatisfactory): less than 60% correct answers

dst (satisfactory): 60-70% of correct answers

db (good): 70%-80% of correct answers

db plus (better than good): 80-90% of correct answers

bdb (very good): over 90% of correct answers

Subject matter of the classes

1. Basic terms.
2. Systemic forms of the state.
3. Sources of law. Generally legislative acts.
4. Outline of the history of political system in Poland.
5. Systematics of law.
6. Basic constitutional concepts.
7. The role of rights and freedoms in the Constitution. Separation. Types of obligations arising from the Constitution.
8. Legislative power in Poland.
9. Executive power. The position of the President in the system of state organs. The role of the President in terms of security.
10. The Council of Ministers.
11. Local government.
12. Common courts, administrative courts, military courts and the Supreme Court.
13. Tasks of the Constitutional Tribunal. Constitutional complaint.
14. Ombudsman. Ombudsman for Children's Rights.
15. The role of the Tribunal of State.
16. Supreme Chamber of Control.

References

Books

Banaszak B., *Outline of Polish Constitutional Law*. Wrocław 2005.

Granat M., Granat K., *Constitution of Poland. A Contextual Analysis*. Bloomsbury Publishing PLC, 2019.

Frankowski S., *Introduction to Polish Law*. Kluwer Law International, Warszawa 2005.

Sulowski S. (ed.), *The Political System of Poland*. Warszawa 2007.

Websites

<https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

<https://www.president.pl/en/about-poland/about-polish-constitution/>

http://news.bbc.co.uk/2/hi/europe/country_profiles/1054724.stm

<https://culture.pl/en/video/the-first-constitution-in-europe-video-explainer>

<https://constitutionnet.org/country/constitutional-history-poland>

State and Law Studies

GENERAL INFORMATION

The image of a crowned white eagle upon a red background is the coat-of-arms of the Republic of Poland. White and red are the colours of the Republic of Poland. 'Mazurek Dąbrowskiego' is the national anthem. Polish is the official language.

The seat of all the most important state institutions is the capital of Poland – Warsaw (Warszawa).

The basic unit of local government is the commune (gmina). There are counties (powiat) and voivodeships (województwo). There are 16 voivodeships.

SOURCES OF LAW

The Constitution of the Republic of Poland

Article 87

1. The sources of universally binding law of the Republic of Poland include: the Constitution, statutes, ratified international agreements, and regulations.
2. Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.

The Constitution uses the notion of the sources of universally binding law, but it does not define it. Thanks to doctrine and practice the notion is uniformly understood. Constitutional division of sources law can be made into two groups: 1) universally binding acts and 2) internal acts. The first group is not definitely closed. Three examples:

Article 59 (2) of the Constitution allows the conclusion of collective labour agreements.

Article 59 (2) Trade unions and employers and their organizations shall have the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other arrangements.

According to Article 234 the Constitution provides for the President's right to issue regulations with the force of statute.

Article 234

1. Whenever, during a period of martial law, the Sejm is unable to assemble for a sitting, the President of the Republic shall, on application of the Council of Ministers, and within the scope and limits specified in Article 228, paras. 3-5, issue regulations having the force of statute. Such regulations must be approved by the Sejm at its next sitting.
2. The regulations, referred to in paras. 1 above shall have the character of universally binding law.

Finally, the Constitution also gives universally binding force to judgments of the Constitutional Tribunal

Article 190

1. Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final.

So, as wrote prof. Bogusław Banaszak in his book, 'closeness' of the system of sources of law is not comprehensive¹.

When it comes to internal act, it appears only in the Constitution resolution of the Council of Ministers as well as instructions of prime minister and of ministers.

Article 93

1. Resolutions of the Council of Ministers and orders of the Prime Minister and ministers shall be of an internal character and shall bind only those organizational units subordinate to the organ which issues such act.
2. Orders shall only be issued on the basis of statute. They shall not serve as the basis for decisions taken in respect of citizens, legal persons and other subjects.
3. Resolutions and orders shall be subject to scrutiny regarding their compliance with universally binding law.

So this group is not closed either. Constitution of Poland does not deal with determining hierarchy of internal acts. Constitutional regulation of acts of internal character in the system of law is in principle limited to adopting the rule that they must be congruent with the universally binding law. Sources of law in the Constitution of Poland do not decide that we have natural law or positive law. Hierarchy of sources of law is not complete. It is imprecise in two points. First one relates to acts of international law.

Article 91 (2)

An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.

The second relates to acts of local law.

Article 94

On the basis of and within limits specified by statute, organs of local government and territorial organs of government administration shall enact local legal enactments applicable to their territorially defined areas of operation. The principles of and procedures for enacting local legal enactments shall be specified by statute.

The Constitution is the supreme law of the Republic of Poland. All other legal acts must comply with it.

SEPARATION OF POWERS

Article 10

1. 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.
2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

¹ B. Banaszak, *Outline of Polish Constitutional Law*, Wrocław 2005, p. 30.

The President and Council of Ministers are executive bodies. They are obliged to cooperate. The provisions of the Constitution of Poland also indicate the necessity of cooperation between the legislative and executive authorities. In Poland, there is a parliamentary system with presidential system elements. The President has the power to veto legislative acts, right to initiate legislation and cooperate with the parliament to elect some of the public organs (e.g. the President of National Bank of Poland).

THE PRESIDENT OF POLAND

The President is a part of executive power. The President of the Republic can be elected for a 5-year term of office. He may be re-elected only for one more term.

Article 126

1. The President of the Republic of Poland shall be the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority.
2. The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory.
3. The President shall exercise his duties within the scope of and in accordance with the principles specified in the Constitution and statutes.

The President of the Republic, as representative of the State in foreign affairs, shall: 1) ratify and renounce international agreements, and shall notify the Sejm and the Senate thereof; 2) appoint and recall the plenipotentiary representatives of the Republic of Poland to other states and to international organizations; 3) receive the Letters of Credence and recall of diplomatic representatives of other states and international organizations accredited to him. The President shall be the Supreme Commander of the Armed Forces of the Republic of Poland.

In the event of a direct external threat to the State, the President of the Republic shall, on request of the Prime Minister, order a general or partial mobilization and deployment of the Armed Forces in defence of the Republic of Poland.

The President shall grant Polish citizenship and shall give consent for renunciation of Polish citizenship. The President may confer orders and decorations. The President of Poland have the power of pardon, too.

Article 144

1. The President of the Republic, exercising his constitutional and statutory authority, shall issue Official Acts.
2. Official Acts of the President shall require, for their validity, the signature of the Prime Minister who, by such signature, accepts responsibility therefor to the Sejm.
3. The provisions of para. 2 above shall not relate to:
 - proclaiming elections to the Sejm and to the Senate;
 - summoning the first sitting of a newly elected Sejm and Senate;
 - shortening of the term of office of the Sejm in the instances specified in the Constitution;
 - introducing legislation;
 - proclaiming the holding of a nationwide referendum;
 - signing or refusing to sign a bill;

- ordering the promulgation of a statute or an international agreement in the Journal of Laws of the Republic of Poland (Dziennik Ustaw);
- delivering a Message to the Sejm, to the Senate or to the National Assembly;
- making a referral to the Constitutional Tribunal;
- requesting the Supreme Chamber of Control to carry out an audit;
- nominating and appointing the Prime Minister;
- accepting resignation of the Council of Ministers and obliging it to temporarily continue with its duties;
- applying to the Sejm to bring a member of the Council of Ministers to responsibility before the Tribunal of State;
- dismissing a minister in whom the Sejm has passed a vote of no confidence;
- convening the Cabinet Council;
- conferring orders and decorations;
- appointing judges;
- exercising the power of pardon;
- granting Polish citizenship and giving consent for renunciation of Polish citizenship;
- appointing the First President of the Supreme Court;
- appointing the President and Vice-President of the Constitutional Tribunal;
- appointing the President of the Supreme Administrative Court;
- appointing the presidents of the Supreme Court and Vice-presidents of the Supreme Administrative Court;
- requesting the Sejm to appoint the President of the National Bank of Poland;
- appointing the members of the Council for Monetary Policy;
- appointing and dismissing members of the National Security Council;
- appointing members of the National Council of Radio Broadcasting and Television;
- establishing the statute of the Presidential Chancellery and appointing or dismissing the Chief of the Presidential Chancellery.
- issuing orders in accordance with the principles specified in Article 93;
- resigning from the office of President of the Republic.

THE COUNCIL OF MINISTERS

The Council of Ministers consist of the president of the Council (Prime Minister) and ministers. It could have a Vice-President and presidents of statutorily defined committees. In Poland, there is no legal regulation clearly indicating the number of members. The Prime Minister has complete freedom in building and shaping the Council of Ministers.

Article 149 (1) Ministers shall direct a particular branch of government administration or perform tasks allocated to them by the Prime Minister. The scope of activity of a minister directing a branch of government administration shall be specified by statute.

The Council of Ministers shall conduct the internal affairs and foreign policy of Poland. The Council of Ministers shall conduct the affairs of State not reserved to other State organs or local government and it manage the government administration. The Council of Ministers shall also:

- 1) ensure the implementation of statutes;
- 2) issue regulations;
- 3) coordinate and supervise the work of organs of State administration;
- 4) protect the interests of the State Treasury;
- 5) adopt a draft State Budget;

- 6) supervise the implementation of the State Budget and pass a resolution on the closing of the State's accounts and report on the implementation of the Budget;
- 7) ensure the internal security of the State and public order;
- 8) ensure the external security of the State;
- 9) exercise general control in the field of relations with other States and international organizations;
- 10) conclude international agreements requiring ratification as well as accept and renounce other international agreements;
- 11) exercise general control in the field of national defence and annually specify the number of citizens who are required to perform active military service;
- 12) determine the organization and the manner of its own work.

Article 150

A member of the Council of Ministers shall not perform any activity inconsistent with his public duties.

PARLIAMENT

There are two houses in parliament: Sejm and Senate. Sejm is the representative assembly of the nation. Its tasks include legislative activities, nominations of some public organs and control of some public organs. The Senate is the 'upper house', in which the legislative process is supposed to be audited. However, in most cases the Sejm has the deciding vote.

Article 95

1. Legislative power in the Republic of Poland shall be exercised by the Sejm and the Senate.
2. The Sejm shall exercise control over the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes.

(Article 96-98+109) The Sejm shall be composed of 460 Deputies. Elections to the Sejm shall be universal, equal, direct and proportional and shall be conducted by secret ballot. The Senate shall be composed of 100 Senators. Elections to the Senate shall be universal, direct and shall be conducted by secret ballot. The Sejm and the Senate shall be chosen each for a 4-year term of office. The Sejm and the Senate shall debate in the course of sittings. Sittings are meetings of deputies presided by the Marshal (Marszałek) of a given house. The Constitution of Poland adopts the principle of the permanent mode of parliamentary work. The Sejm has internal bodies:

A) The Marshal (Marszałek) of the Sejm/Senate – head of the house who presides over the debates, represents the Sejm/Senate (each house has its own Marshal), summons the sittings of the house and others.

Article 110

1. The Sejm shall elect from amongst its members a Marshal of the Sejm and Vice-Marshals.
 2. 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.
- B) Presidium of the Sejm/Senate – the Marshal and his deputies; they determine agenda of the parliament activities and coordinate the work of parliamentary committees

C) Council of Seniors of the Sejm – members of the Presidium of the Sejm and presidents (or their deputies) of the groups and representatives coalitions of groups and clubs; it's advisory body, which provides opinions about plans for work of the Sejm or agenda of the parliament activities.

D) Commissions

Article 110

3. The Sejm shall appoint standing committees and may also appoint special committees.

The constitution provides for the convening of a National Assembly.

Article 114

1. In instances specified in the Constitution, the Sejm and the Senate sitting in joint session, shall act as the National Assembly, with the Marshal of the Sejm presiding or, in his absence, the Marshal of the Senate.
2. The National Assembly shall adopt its own rules of procedure.

The National Assembly is exceptional. It takes up the following matters: receiving the pledge from the newly-elected president (according to **Article 130 of the Constitution: The President of the Republic shall assume office upon taking the oath in the presence of the National Assembly**), receiving the President's Message (**Article 140 of the Constitution: The President of the Republic may deliver a Message to the Sejm, to the Senate or to the National Assembly**) and others.

LEGISLATIVE PROCESS

The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers and a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in the last one shall be specified by statute. Initiators, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation.

Article 119

1. The Sejm shall consider bills in the course of three readings.
2. The right to introduce amendments to a bill in the course of its consideration by the Sejm shall belong to its initiator, Deputies and the Council of Ministers.
3. The Marshal of the Sejm may refuse to put to a vote any amendment which has not previously been submitted to a committee.
4. The sponsor may withdraw a bill in the course of legislative proceedings in the Sejm until the conclusion of its second reading.

Article 120

The Sejm shall pass bills by a simple majority vote, in the presence of at least half of the statutory number of Deputies, unless the Constitution provides for another majority. The same procedure shall be applied by the Sejm in adoption of resolutions, unless a statute or a resolution of the Sejm provide otherwise.

Article 121

1. A bill passed by the Sejm shall be submitted to the Senate by the Marshal of the Sejm.
2. The Senate, within 30 days of submission of a bill, may adopt it without amendment, adopt amendments or resolve upon its complete rejection. If, within 30 days following the submission of the bill, the Senate fails to adopt an appropriate resolution, the bill shall be considered adopted according to the wording submitted by the Sejm.
3. 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.

Article 122

1. After the completion of the procedure specified in Article 121, the Marshal of the Sejm shall submit an adopted bill to the President of the Republic for signature.
2. The President of the Republic shall sign a bill within 21 days of its submission and shall order its promulgation in the Journal of Laws of the Republic of Poland (Dziennik Ustaw).
3. The President of the Republic may, before signing a bill, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The President of the Republic shall not refuse to sign a bill which has been judged by the Constitutional Tribunal as conforming to the Constitution.
4. The President of the Republic shall refuse to sign a bill which the Constitutional Tribunal has judged not to be in conformity to the Constitution. If, however, the non-conformity to the Constitution relates to particular provisions of the bill, and the Tribunal has not judged that they are inseparably connected with the whole bill, then, the President of the Republic, after seeking the opinion of the Marshal of the Sejm, shall sign the bill with the omission of those provisions considered as being in non-conformity to the Constitution or shall return the bill to the Sejm for the purpose of removing the non-conformity.
5. If the President of the Republic has not made reference to the Constitutional Tribunal in accordance with para. 3, he may refer the bill, with reasons given, to the Sejm for its reconsideration. If the said bill is repassed by the Sejm by a three-fifths majority vote in the presence of at least half of the statutory number of Deputies, then, the President of the Republic shall sign it within 7 days and shall order its promulgation in the Journal of Laws of the Republic of Poland (Dziennik Ustaw). If the said bill has been repassed by the Sejm, the President of the Republic shall have no right to refer it to the Constitutional Tribunal in accordance with the procedure prescribed in para. 3.
6. Any such reference by the President of the Republic to the Constitutional Tribunal for an adjudication upon the conformity of a statute to the Constitution, or any application for reconsideration of a bill, shall suspend the period of time allowed for its signature, specified in para. 2, above.

JUDICIARY IN POLAND

The judiciary in Poland consists of courts and tribunals.

The tribunals include: the Constitutional Tribunal and the Tribunal of State.

Article 175

1. The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts.
 2. Extraordinary courts or summary procedures may be established only during a time of war.
- Courts and tribunals adjudicate on behalf of the Republic of Poland.

Article 188

The Constitutional Tribunal shall adjudicate regarding the following matters:

1. the conformity of statutes and international agreements to the Constitution;
2. the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
3. the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
4. the conformity to the Constitution of the purposes or activities of political parties;
5. complaints concerning constitutional infringements.

According to 198 (1) of Constitution the following persons shall be constitutionally accountable to the Tribunal of State: the President of the Republic, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Chamber of Control, members of the National Council of Radio Broadcasting and Television, persons to whom the Prime Minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces for violations of the Constitution or of a statute committed by them within their office or within its scope.

Article 176

- 1. Court proceedings shall have at least two stages.**

The organizational structure and jurisdiction as well as procedure of the courts are specified by statute.

Article 177

The common courts shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts.

Article 183

1. The Supreme Court shall exercise supervision over common and military courts regarding judgments.
2. The Supreme Court shall also perform other activities specified in the Constitution and statutes.

Article 184

The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to statute of resolutions of organs of local government and normative acts of territorial organs of government administration.

In Poland, there is the Supreme Administrative Court and sixteen Voivodeship Administrative Courts.

Tasks and exercises:

1. Sources of law in Poland.
2. Judiciary in Poland.
3. President of Poland.
4. Parliament in Poland.
5. Council of Ministers in Poland.
6. Legislative process in Poland.
7. Separation of powers in the Republic of Poland.

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