

Rights and Duties in the Polish March Constitution 1921 – An Illusion of the Liberal Constitution?

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Abstract: The paper analyses the catalog of rights and freedoms contained in the March Constitution, and recognizes its advanced character in the European context of the time. However, problematic profiles in terms of effectiveness are also examined, and ultimately the disappearance of the model itself with the passage to the authoritarian phase of Polish history.

Keywords: Polish constitutional history, European context, rights and freedoms, constitutional myths, authoritarian phase.

1. The Liberal Myth of the March Constitution

The Constitution from March 1921¹ was a Polish democratic myth. It was a fundamental law of the democratic state for a relatively short time. Already five years later a coup d'état² converted the state into an authoritarian regime, albeit the March Constitution was formally still in force until the adoption of the non-democratic April Constitution.³ During the adoption of the latter the parliamentary procedure was infringed⁴ and, therefore, Poland entered into the schizophrenic situation where a part of the society was

¹ Ustawa dnia 17 marca 1921 roku, Konstytucja Rzeczypospolitej Polskiej, Journal of Laws, No. 44 item 267, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19210440267> (accessed 29.07.2021).

² The May Coup was carried out by Marshal Józef Piłsudski on 12-14 May 1926 and it overthrew the democratically elected government. Peter D. Stachura, Poland, 1918-1945: An Interpretive and Documentary History of the Second Republic, Psychology Press 2004, p. 65; Antoni Czubiński, *Przewrót majowy 1926 r. i jego następstwa*, in: *Ewolucja systemu politycznego w Polsce w latach 1914-1998. Tom I: Odbudowanie Niepodległego państwa i jego rozwój do 1945 roku. Część I: Zbiór studiów*, Poznań 1999, p. 142.

³ Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r., Journal of Laws No. 30 item 227, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19350300227> (accessed 29.07.2021).

⁴ Przemysław Kierończyk, *O mniej znanych kontrowersjach prawnych związanych z przyjęciem Konstytucji kwietniowej z 1935 r.*, *Przegląd Sejmowy* 2015/2:51-64, 52-56.

denying the validity of the new constitution. As a result, the Polish government, which was on exile during the Second World War, was acting on the basis of the March Constitution. Even the communist rulers formally started their reign with the application of the March Constitution⁵ – this, however, was only a fiction, having little in common with the actual government's operation. This complicated life-cycle of the March constitution makes its analysis more difficult, as it can hardly be performed without taking into consideration the political context. The legal duplicity which could be observed at that time is not only a pure history: the current political situation in Poland is also characterized by the dualism of legal sources and their disintegration. The March Constitution is somewhere at the beginning of this sophisticated path.

The March Constitution has been seen as the symbol of the beginning of the democratic state, but it has also been associated with Piłsudski⁶ – as a result the manner in which it is perceived is influenced by Piłsudski's mythos⁷ and his negative perspective on the parliamentary institutions of the Second Republic of Poland. In the time of the communism the Piłsudski mythos was growing. His perspective on the March constitution was one of the reasons for the political crisis of the first part of 20ties which came to an end with Piłsudski's May assault.

For the Anti-Piłsudski camp the March Constitution was a symbol of the liberal-democratic beginning of the state and a tool to undermine the legitimacy of the "Sanacja"⁸ – regime of Piłsudski and his followers. This picture of the democratic-liberal constitution is partially true. Its catalogue of rights is quite extended and modern.⁹ In this short paper it should be examined whether the system of the duties and rights in the March Constitution actually constituted a solid freedom-oriented framework of the

⁵ Michał Pietrzak, *Konstytucja z 17 marca 1921 r. z perspektywy 80 lat*, Przegląd Sejmowy, 2001/43(2), p. 16.

⁶ Marta Marcinkiewicz, *O konstytucji kwietniowej raz jeszcze*, Pamięć i Sprawiedliwość 2018/1:296-355, 301; Michał Klimecki, *Józef Piłsudski in the history of Poland and Europe. Introduction to the biography*, Analele Științifice ale Universității »Alexandru Ioan Cuza« din Iași. Istorie 2017/63:11-21. <https://www.cceeol.com/search/article-detail?id=664909> (accessed 29.07.2021).

⁷ Monika Świda, *The historical figures of the Republic in the process of reconstitution of the national imagery: Sidónio Pais and Józef Piłsudski*, Studia Litteraria Universitatis Iagellonicae Cracoviensis 2012/4:153-167, 161-162.

⁸ Waldemar Paruch, *Myśl polityczna formacji piłsudczykowskiej w Polsce... (1926-1939) – cechy podstarwowe*, ANNALES UNIVERSITATIS MARIAE CURIE-SKŁODOWSKA LUBLIN – POLONIA 2014/XXI(2), p. 126-131.

⁹ Włodzimierz Suleja, *Sukcesorzy Sejmu Wielkiego. Sejm Ustawodawczy 1919-1922: między budową nowoczesnej Polski a partykularyzmem politycznym*, Przegląd Sejmowy 2019/1:255-263, p. 259. Following Robert Stawicki it was one of the most elaborated catalogue of the citizens' rights in the constitutions of those time: Robert Stawicki, *Prawa i obowiązki obywatelskie w Polsce po roku 1918 r. w świetle rozwiązań konstytucyjnych – zarys historyczno – prawny*, Kancelaria Senatu. Biuro Analiz i Administracji 2011, [OT-607.indd \(senat.gov.pl\)](https://www.ot-607.indd(senat.gov.pl)), (accessed 08.08. 2021), p. 5

legal system or whether it was rather a republican,¹⁰ more-duties-then-rights-oriented fundamental law for the country.

2. The catalogue of the rights and duties

It is not a surprise that the catalogue of rights and duties provided by the March Constitution starts with the list of duties of citizens. The Constitution was drafted and adopted in the extremely turbulent time after the Great War, almost during the Polish – Ukrainian and Polish-Russian conflict.¹¹ The country needed to be unified after the partition. Almost all borders were contested, the approach of numerous minorities towards the newly established Republic was varying from loyalty to hostility. It was a country of the numerous religions with particularly strong and historically essential role of the Roman-Catholic Church. The Constitution served in the process of the initial organization of the state allowing for the necessary consolidation of the country with the dispersed identity and in the desperate need for integration and mobilization: the country was endangered and devastated by war. These very specific historical perspective must be considered while analyzing this catalogue. It does not mean that this specific background justifies all disadvantages of the Constitution. The question is whether the embodied flaws of the system were among the reasons leading to the collapse of the political system envisaged by this Constitution.

It is not a surprise that the first duty concerns the prohibition of having more citizenships than the Polish one (Art. 87). The new state emerged from three parts conquered by the neighbors and fighting on all borders could not accept the concept of the shared loyalty.¹² The duty of the allegiance, arising from the Article 89 results from this same consideration. The further duties include: duty to observe the Constitution and the law (Art 90), duty to perform the military service (Art. 91), duty to carry the public burdens by the citizens (Art. 92), duty to respect the legitimate government (Art. 93), duty to educate children to be loyal citizens (Art. 94). All these duties stemmed from the general idea of the reemergence of the political nation.

The catalogue of the rights is also designed with this fundamental idea in mind. It serves to enhance the acceptance of the new country by possibly vast groups of its inhabitants. This was the purpose of Art. 95, providing the guarantee of the life, freedom and property, disregarding the ethnical origin,

¹⁰ R. Stawicki regards this catalogue as “liberal”, *Prawa i obowiązki w Polsce*, p. 5.

¹¹ [Konstytucja marcowa 1921 \(sejm.gov.pl\)](http://sejm.gov.pl).

¹² Michał Zieliński, *Obowiązki konstytucyjne a ustroj państwa*, in: M. Jabłoński, S. Jarosz-Żukowska, *Aktualne wyzwania ochrony wolności i praw jednostki: prace uczniów i współpracowników dedykowane Profesorowi Bogusławowi Banaszakowi*, E-Wydawnictwo Wydziału Prawa i Administracja Uniwersytetu Wrocławskiego, Wrocław 2014, pp. 403 – 404.

nationality, language, race or religion. This guarantee, with the reservation of reciprocity, was extended to the foreigners (with the exception of explicit requirement of the Polish citizenship by law in particular cases). The following article stipulates the principle of the equality of all citizens before the law and abolishment of all family privileges, coat of arms, nobility, etc. Of course, the grounds for this provision reflected the progressive and democratic wave in Europe of this time, but it was also a try to gain the support of the broad underprivileged population for the idea of the Polish state. The consolidation of the nation for the country-building process was probably the most powerful justification for the wording of this provision.

Two further provisions were the fundamentals of the rule of law.¹³ All kind of limitations of the personal freedom required a statutory basis. Also the formal investigation against a citizen and eventually a punishment required a statutory basis. Art. 98 guarantees an access to the court and stipulates the requirements for the admissibility of the extraordinary courts.

Two further provisions deal with the guarantee of property and inviolability of the apartments, The Constitution guarantees also the freedom of movability and settlement within the territory of the country (Art. 101), protection of employment and right to the social care (Art. 102), support for children (Art. 103), freedom of speech (Art. 104), freedom of press (Art. 105), secrecy of correspondence (Art. 106), right to petition to all governmental bodies (Art. 107), freedom of association (Art. 108), guarantees for national and linguistic minorities (Art. 109 and 110), freedom of religion (Art. 111 and 113) and its limits (Art. 112), particular position of the Roman - Catholic Church (Art. 114) and guarantees for other recognized churches (Art. 115), conditions for the recognition of new denominations (Art. 116), freedom of science (Art. 117), duty of education for all citizens (Art. 118), guarantee of the free education in the governmental schools (Art. 119), right to damages for losses caused by the governmental authorities (Art. 120), extension of the application of the provisions on citizens' rights to the military service (Art. 121), requirements for the use of the military force (Art. 122) and, finally, the restrictions on rights in emergency situations (Art. 123).

It was a modern catalogue of the emerging state, which was designed to consolidate the political nation, gaining its loyalty and trying to unify a culturally and ethnically diverse society. In fact, however, this catalogue and the legislative method was showing one immanent flaw. In the crucial moments the Constitution, while defining the core of the constitutional rights, was referring to the simple statute. For instance, the freedom of movability and settlement could be limited by a simple statute (Art. 101), freedom of speech had a limit in the simple statute (Art. 104), freedom of press "could be abused" in the situations defined by the simple statute (Art.

¹³ Michał Pietrzak, *Konstytucja z 17 marca 1921 r. z perspektywy 80 lat*, Przegląd Sejmowy, 2001/43(2), p. 12.

105), freedom of religion could not be exercised against the simple statute (Art. 112), etc. In the society shackled by the deep social, political, and religious, ethnical conflicts it was very easy to reduce the scope of the rights even without gaining the majority necessary for the amendment of the Constitution.

3. The effectiveness of fundamental rights

It cannot be forgotten that Art. 81 explicitly forbade the courts to question the validity of a properly adopted statute. It was a prohibition of the dispersed constitutional check. There was no other system of the constitutional check, like a constitutional court. The lack of any system allowing for the verification of the existing laws from the perspective of their conformity with the Constitution reduced the actual effectiveness of the constitutional catalogue of rights, converting them into a programmatic list which was not protected by the system of the judicial review against the political forces not willing to observe these guarantees and rights.¹⁴

The March Constitution is an example of the willingness to organize a modern state. It also demonstrates that the necessity to conclude that many compromises¹⁵ may preclude achieving goals of the integration and consolidations of the political nation in a critically dangerous international but also internal situation. Finally, the process of creating a multicultural society unified in its loyalty toward the Republic was, unfortunately, not successful.¹⁶ In fact, it weakened the new Republic, preventing the organization of the powerful and well-functioning state.

4. General Assessment of the rights' and duties' catalogue in the 1921' Constitution

The rights' and duties' catalogue of the March Constitution proves the aspiration of the new society and, at this same time, it is an evidence of its deep structural flaws.¹⁷ The leading forces who took part in the process of

¹⁴ Michał Pietrzak, *Konstytucja z 17 marca 1921 r. z perspektywy 80 lat*, Przegląd Sejmowy, 2001/43(2), p. 12.

¹⁵ Marta Marcinkiewicz, *O konstytucji kwietniowej raz jeszcze*, Pamięć i Sprawiedliwość 2018/1:296-355, 229.

¹⁶ However, it is underlined that introduced change in perspective remained – the own, re-born state was seen as the common and the highest good. Włodzimierz Suleja, *Sukcesorzy Sejmu Wielkiego. Sejm Ustawodawczy 1919–1922: między budową nowoczesnej Polski a partykularyzmem politycznym*, Przegląd Sejmowy 2019/1:255-263, p.260.

¹⁷ The government of the Republic organized a Constitutional Bureau in the year 2019 and appointed as a head of this entity, responsible for drafting the constitution Mieczysław Niedziałkowski, an activist of the Polish Socialist Party (PPS). The three drafts prepared by the Bureau (one based on the direct democracy, one federal and one following the French model), have not been accepted by the government. Instead, the

activist (Eligiusz Niewiadomski) because of being elected by the majority with the necessary participation of the members of Sejm from the national minorities.²⁴ This conflict, accompanied by the successes of the nationalist's parties were some of the reasons behind the May coupe d'état of Piłsudski. The side-effect of the latter was the destruction of the Polish democracy. It must be admitted that even from the historical perspective it is not possible to assess, whether the effectively organized system of the fundamental rights, enforceable by the courts, would prevent the depart from the democracy. The effective judicial system of the fundamental rights protection could sometimes help to relax the tensions within the society. This requires, however, certain level of harmony within the society and the awareness that the law may serve to the peaceful and just resolution of the conflicts within the society. In these turbulent times these requirements were not fulfilled – probably, their fulfillment was not possible in this historical moment.

The lack of the judicial review of the Constitution was also not exceptional at those time. On some part of the Polish territories, previously controlled by the Austrian Empire (during the time of the Polish partition), there were experiences with a kind of a constitutional court: *Reichsgerichtshof*. Yet, the new Republic has not endorsed this idea. For the people of this time it would be a non-democratic concept, since the parliament's decision could be verified by the court. When the March Constitution was being drafted, the time of the constitutional review in Europe as a general concept of the enforcement of the constitution had not come yet.

The catalogue of rights and duties in the March Constitution was a sign of an attempt to organize the life of people after the atrocities of the WWI upon the new democratic fundament, including the new scheme of the fundamental rights. The catalogue of duties reflected the needs of the emerging and endangered country. The March Constitution has not prevented the depart of the state from the democratic standards and its ultimate collapse. Nevertheless, it is an important symbol and a monument of the never fulfilled aspirations.

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Mateusz Usiądek, *Tragedia w Warszawskiej Zachęcie – zabójstwo prezydenta Gabriela Narutowicza*, Kortowski Przegląd Prawniczy No. 3, 2016, p. 137.

²⁴ P. M. Usiądek, *Tragedia w Warszawskiej Zachęcie*, p. 139; Jarosław Durka, *Gabriel Narutowicz i polityczny gorący grudzień 1922 w optyce polskich środowisk ziemiańskich nurtu konserwatywnego* in: M. Białokur (ed.), *Prezydent Gabriel Narutowicz i polityczny gorący grudzień 1922 r., Cum Laude*, Opole 2013, pp. 110 – 116.

