

A Few Remarks on Poland's Legal System

**Dr Jakub Stelina, Vice-Dean
Faculty of Law and Administration
Gdansk University**

1) The legal and political system of Poland – general characteristics

Poland is a country with a so-called positive law system. The said means that it is only the acts that come from the authorised public agencies supplied with the law-making powers that constitute the law in force. The agencies, as mentioned in the Constitution of the Republic of Poland of 1997, include: the Parliament, President, and agencies of central and local government.

The most important source of law in Poland is the Constitution. It was enacted by the Parliament on April 2, 1997, and then approved by the nation in a referendum. The Constitution provides for the foundations of the socio-political system and it states that Poland is a democratic state of law in which the principles of social justice are pursued. The rule of separation of powers is strictly observed in this country. The Constitution also provides for basic personal, political, economic, social and cultural rights of the citizens.

The head of the state is the President elected, in a popular voting, every five years. The functions of the President are mostly ones of representation, yet he/she is entitled, under certain circumstances, to dissolve the Parliament. It is also him/her that appoints the prime minister and ministers.

The main law-making body is a bicameral Parliament, composed of the *Sejm* and the *Senat*. Laws are passed by the *Sejm*, to be further approved by the *Senat* and President. The *Senat* is entitled to make amendments to the laws passed by the *Sejm*. The *Senat's* amendments can be rejected by the *Sejm* by an absolute majority of votes, at least half of its members being present. The Act passed by the Parliament goes to the President by whom it is signed and published in the official journal of promulgation. Instead of signing the law, the President can veto it or direct for consideration by the Constitutional Tribunal. The President's veto can be rejected by the *Sejm* by a majority of 3/5 of votes. The parliamentary term of office is four years.

As regards courts, the Constitution declares that the administration of justice in Poland is in the hands of the Supreme Court, the common courts of law, the administrative courts and the military ones. Besides them there is a court appointed to examine laws for their compliance with the Constitution – the Constitutional Tribunal. As the case is with a country with the positive system of law, the role of the courts is formally limited to the application and interpretation of rules of law, the courts not performing law-making functions. Important and precedential decisions of courts often do become, however, models for practical application of certain rules, thus operating, in fact, in a way similar to the enacted legal rules. It also happens that the legislators amend provisions of law by shaping them according to the model developed by the law courts' decisions. It is only the Constitutional Tribunal that has the power to cancel the legal rules found by the Tribunal to be non-constitutional.

2) Transformations of Poland's legal system

Unfortunately, the legal system of Poland is hardly a stable one. Over a few last decades it has undergone at least two major changes of a truly fundamental nature, consisting in gross re-orientation of its axiological and structural foundations. Both changes resulted from the transformations of the entire socio-political system, and were thus reflecting those general changes. Both changes are, in fact, ones of continuous character and have not been finally completed, although their main intensity, concentrated in a relatively short time, is already behind us.

a) The first of the changes in question occurred at the turn of the '80s and '90s of the twentieth century, when transformation of the political and economic system was started in Poland and other countries of the Central and Eastern Europe. Transfer from the socialist to the democratic system based on market economy required fundamental changes of the system of law. The political and economic shape of the state changed, which involved corresponding changes in the entire legal system, the constitutional, civil, administrative, labour etc. law in particular. Besides introducing democratic mechanisms, deep reforms of the economy started (freedom of business, privatisation etc.). A characteristic feature of the period was that the law was lagging behind the realities of life, the political and economic situation changing so quickly that the Parliament could not cope with the task of amending even the most important legislation. This was true, for instance, about the required amendments to the Constitution (the new Constitution having been passed after roughly 8 years from the start of the transformation) or the civil law.

b) The second issue is about the processes of Poland's integration into the European Communities. In a relatively short time the process of so-called "Europeisation" of Polish law was started. Under the European Union Association Treaty the path towards Poland's future integration into the European Communities was laid out. Since that very time Polish legislation has been gradually aligned with the Community law, the main wave of the implementation taking place in the years 2001-2004, when attempts were made to hastily make up for the lost time.

Poland's accession into the EU has resulted in fundamental changes of the structure of Polish legal system. First of all, the national legal system got dependent on the Community legal system, and the EU law became the law in force on the territory of the Republic of Poland. A most important issue is a change in the hierarchy of the sources of law. It is the EU law that takes precedence now, and competent institutions of the Community (e.g. the European Court of Justice) have the powers to verify Polish law for its compliance with the Community law. The problem of the relation of the national Constitution to the Community treaty law has not been quite resolved yet, however, and not only in Poland. The position of the citizens has greatly changed as well. They have now the right to be provided assistance by the Community institutions, and they gladly make use of it.

3) Legal culture

To sum up, it is worthwhile to say a few words about the legal culture, i.e. a certain system of values and attitudes related to the perception and observation of law.

Poland is a country that can boast a long legal tradition. The first university including the faculty of law was established in Cracow as early as in the latter half of the fourteenth century, although many Poles had been educated at the top European universities even before that time. And the traditions of humanism and tolerance have always been strong here.

At present, in Poland (with its almost 40 million inhabitants) there are 15 state-owned universities and 5 private higher schools of university standing that have faculties of law. 5-7 thousand of lawyers graduate from the legal faculties annually. For many years the studies of law have enjoyed great and unchanging popularity among masses of young people. The studies last for 5 years, during which time at least a 4-week internship has to be taken part in. The students get themselves acquainted with all branches of law, as well as history and philosophy of law, and they also study certain selected general subjects (like economics, sociology, philosophy). The studies end with the law master's title being conferred onto the graduate. Studying abroad, under Socrates and Erasmus programmes, is highly popular among students of law.

Unfortunately, over the last years, a drop in the authority of law and, consequently, a lowering of the level of the legal culture has been observed. The reasons for that include, on the one hand, certain specific factors, like the tradition to neglect law (before 1989 it was a mere instrument of power exercised by bodies that had no democratic mandate to wield it), and on the other hand a kind of an inflation of law (i.e. superfluous regulation, with the Parliament enacting ever more laws pertaining to an ever greater number of spheres of life). The phenomena are accompanied by a certain "fetishisation" of law, i.e. the belief that the latter is omnipotent, and that by mere enacting a law social problems can be resolved (an example of that is the hope that increased severity of penalties would effectively hold crime back). Law happens to be employed instrumentally as well, to achieve current political goals. All of that adds up to lack of stability of legal regulations and poor quality of those.

Despite the negative phenomena indicated above, one should hope for gradual improvement of the legal culture of the society. Definitely activities of some agencies of the state should be of assistance in that respect. This holds true, in particular, about the Constitutional Tribunal, monitoring the adherence to the basic values related to the operation of law.