

Teisės aktualijos

REGULATION OF THE HORIZONTAL RELATIONS IN THE CONSTITUTION OF THE REPUBLIC OF POLAND

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Introduction

Regulation of horizontal relations (that is, relations between individuals) at the constitutional level is a phenomenon that is commonly found at the present time in democratic countries. To some extent this is a departure from the traditional model of the constitution as the legal act that regulates relations between an individual and the state (vertical relations), although of course this latter issue is still the main subject of constitutional regulation. Next to vertical relations, as if in parallel, contemporary constitutions increasingly regulate completely different categories of legal relations, to which the state is not a party, such as the relations between employers and employees, parents and children, and entrepreneurs and consumers. This kind of horizontal relationship is also the subject of regulation under the Constitution of the Republic of Poland adopted by the National Assembly on 2nd April 1997. I would therefore like to consider the type of horizontal relations that are covered by constitutional regulation, the extent to which regulation affects these relations, and the significance of regulation. However, the text of the Constitution of the Republic of Poland will only be the starting point for the formulation of more general conclusions that – I strongly believe – are also suitable for many other European constitutional regulations¹.

1. The scope of constitutional regulation

The aim of the first constitutions was to limit the absolute power of the monarch, on the one hand by defining the principles of the organization and functioning of the state apparatus, and on the other by determining the boundaries of action for the state authorities. The first constitutions were addressed to the state and its organs, and thus horizontal relations remained completely outside the scope of their regulation.

¹ This paper contains the results of my research on the horizontal dimension of constitutional rights in a comparative perspective, which is financed by the Foundation for Polish Science (POMOST BIS/2012 – 6/2).

However, the situation changed when new regulations concerning human rights and freedoms started to be implemented into the texts of constitutions. It was initially assumed that human rights and freedoms do not require constitutional regulation, as they have their origin in the natural law, and that including them in a constitution could lessen their rank and importance². For this reason, the original text of the Constitution of the United States of America, which was signed in 1787, did not contain any provisions regulating the status of the individual in the country. It is also significant that the first legal acts in which issues relating to individuals' rights were recognized had the character of declarations adopted in parallel to national constitutions. As an example of this type of legal act, one could suggest the Virginia Bill of Rights (1776) or the French Declaration of the Rights of Man and of the Citizen (1789). These documents differed significantly from previous legal acts that also declared a protection for individual rights, such as the English Magna Carta or the acts granting privileges for nobles (such as the privilege of "Neminem captivabimus nisi iure victum" granted by the king Władysław Jagiełło). Privileges described in these last documents were granted by the monarch and could have been taken away at any time. Only the development of the doctrine of natural law in the eighteenth century allowed people to look at issues of an individual's status from a completely different perspective. There was then a widespread belief that individual rights can be enjoyed by everyone without exception, and moreover, that they are natural and inalienable rights. The only appropriate form for their recognition is a declaration (that is, an affirmation their existence). However, the increase in the importance of the constitution and its guaranteeing function created the need to extend constitutional guarantees to the area of individual rights and freedoms, and thus the need to regulate this matter in the legal act having the highest legal force³. Although this did not mean granting the state the competence to give or take away the rights and freedoms of the individual, the declarative inclusion of these rights and freedoms in the constitution still obliged the state authorities to respect and protect them. The phenomenon of the constitutionalization of human rights and freedoms, which was supported by the creation of more and more effective procedures for their protection, intensified after World War II under the influence of experiences connected with the war. Currently, there is no doubt that the task of the constitution is not just to regulate the rules for the organization of the state apparatus and its legal systems. This would be an unfair minimization of the functions of the constitution. The legal act having the highest legal force, which is the constitution, should also set the axiological rules for society and determine the position of the individual in society and the state⁴.

The idea of the protection of the basic rights of the individual was expressed in the first constitutions within general categories, such as life, freedom, and property. The protection was given in the form of rules rather than by describing subjective rights. However, it soon turned out that the better solution is to make individual rights concrete in the text of the constitution, as this guarantees a significantly higher level of protection. This phenomenon is defined in Polish legal doctrine as the "atomization of the individual's rights"⁵. National and international human rights catalogues became more and more complex, and included rights that were sometimes very narrowly defined. After the personal and political rights in the constitutional text, social rights were also introduced, and among these were rights referring directly to relations between private parties. The constitutionalization of the growing

² GARLICKI, L. *Polskie prawo konstytucyjne, Zarys wykładu*. Warsaw, 2006, p. 31.

³ TULEJA, P. *Normatywna treść praw jednostki w ustawach konstytucyjnych RP*. Warsaw, 1997, p. 10; SAFJAN, M. *Efekt horyzontalny praw podstawowych w prawie prywatnym: autonomia woli a zasada równego traktowania*. *Kwartalnik Prawa Prywatnego*, 2009, № 2, p. 298–299.

⁴ DUTKIEWICZ, P. *Problem aksjologicznych podstaw prawa we współczesnej polskiej filozofii i teorii prawa*. Cracow 1996, p. 97.

⁵ KĘDZIA, Z. *Zasady konstytucyjnego katalogu praw, wolności, obowiązków człowieka i obywatela*. In KĘDZIA, Z. (red.). *Prawa, wolności i obowiązki człowieka i obywatela w nowej polskiej Konstytucji*. Poznań, 1990, p. 50.

number of individual rights primarily had the character of a guarantee. In this way, the state not only declared that these rights should be respected, but also became obliged to protect them. Thus, constitutions began to regulate such horizontal relations, within which parties have non-equivalent positions so that one of them requires protection from the state. In this way, the aforementioned regulations on the relations between employers and employees, parents and children, and entrepreneurs and consumers appeared. This was accompanied by the expansion of the constitutional instruments for the protection of individual rights, the most significant of which was the guarantee of the possibility of their execution in the courts. Judicial protection is currently available in democratic countries both for cases when the violator of the individual's rights is the state and for cases when the violator is another individual.

2. Horizontal relations that are regulated by the Polish Constitution

In the Constitution of the Republic of Poland, rights and freedoms are regulated in chapter II, which is entitled "The freedoms, rights and obligations of persons and citizens". A few rights and freedoms, mostly of a political nature, are also regulated outside this chapter. Among the rights and freedoms regulated by the Constitution of the Republic of Poland, one can distinguish those that can only be asserted in vertical relations from those that can also be asserted in horizontal relations. In the first case, the individual is the subject of the constitutional rights, while the state is obliged to respect and protect those rights. In the second case, it is not only the state, but also an individual that can be subject to some obligations. Examples of constitutional rights that have only a vertical dimension are the right of access to public services (Art. 60 of the Polish Constitution) and the right to participate in referendums and elections (Art. 62 of the Polish Constitution), while examples of constitutional rights that can also have a horizontal dimension are freedom of speech (Art. 54 of the Polish Constitution), freedom of assembly (Art. 57 of the Polish Constitution), and the right to organize workers' strikes (Art. 59, para. 3 of the Polish Constitution). Isolating the category of rights that have only a vertical dimension is, however, not a simple task. As an example, one could consider the right to obtain a remedy from the courts, which seems to be the classic right from this category, and which can be infringed by one individual deliberately extending a piece of litigation and thus preventing the implementation by another individual of the right to a judgment without undue delay guaranteed in Art. 45, para. 1 of the Polish Constitution.

Among the provisions of the Constitution of the Republic of Poland, special attention, in the light of these considerations, should be paid to those provisions that grant rights to an individual that apply only to horizontal relations. In the first place, we should mention here the rights that are part of the relations between parents and children. In the Polish Constitution these are expressed as the right of parents to bring up children in accordance with their own convictions (Art. 48, para. 1 of the Polish Constitution) and the right of parents to ensure that their children have a moral and religious upbringing and teaching in accordance with their convictions (Art. 53, para. 3 of the Polish Constitution). The first provision states that a child's upbringing shall respect the degree of maturity of the child as well as his freedom of conscience and belief and also his own convictions. This provision, therefore, not only entitles parents to bring up children according to own beliefs, but also obliges parents to allow their children, within this upbringing, to exercise particular rights and freedoms, namely the freedom of faith and religion, as well as the right to decide for themselves to the extent they are mature enough to do so. Thus, Art. 48, para. 1 of the Polish Constitution is also a provision granting children specific rights and freedoms in their relations with their parents.

In the second category of horizontal relations governed by the Constitution are relations between employers and employees. Art. 59 para. 1 of the Polish Constitution guarantees employees freedom of association in trade unions, and guarantees employers the right to create employers' organizations. In

turn, Art. 59 para. 2 grants both professional groups “the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labor agreements and other arrangements”. The subjects entitled and at the same time obliged in the light of these provisions are the trade unions of employees on the one hand, and employers and their organizations on the other. Art. 59 para. 3 of the Polish Constitution, according to which trade unions have the right to organize workers’ strikes and other forms of protest, subject to limitations specified by statute, should be interpreted in a similar way. The employer in this case is not described as the entity that is obliged to respect this right but, due to the fact that he will receive the demands of the striking workers, it is obvious that he must have some obligations connected to the right to organize strikes. This brings us to the conclusion that the right to organize strikes and other forms of protest is a right operating horizontally between employees as the entitled entities and employers as the obliged entities. In the context of employee relations, attention should also be paid to the next two constitutional provisions. According to Art. 65, para. 3 of the Polish Constitution, the permanent employment of children under the age of 16 is prohibited. The addressee of this very specific prohibition is every employer, including private employers. The same is true of Art. 66 of the Polish Constitution, which guarantees the employee the right to safe and hygienic conditions of work and the right to statutorily specified days free from work, as well as annual paid holidays. These are also rights implemented in a horizontal relationship, and hence the employer is obliged to respect them. In the case of the first of these rights, this is clearly indicated by the second sentence of Art. 66, para. 1 of the Polish Constitution, according to which the “obligations of employers shall be specified by statute”.

The third type of horizontal relations that are regulated in the Constitution of the Republic of Poland are relations between entrepreneurs on the one hand and consumers, customers, hirers, and lessees on the other. According to Art. 76 of the Polish Constitution, public authorities are obliged to protect consumers, customers, hirers, and lessees against activities threatening their health, privacy, and safety, as well as against dishonest market practices. The protection that is mentioned in this provision is not protection against the actions of the state, which – according to Art. 30 of the Polish Constitution – has the obligation to respect and protect the rights and freedoms of the individual. Thus, it suffices that the state will implement this obligation, and there is no need to protect the individual against the actions of the state. In Art. 76 of the Polish Constitution the consumers, customers, hirers, and lessees are thereby guaranteed protection against the actions of non-state actors, that is, against private parties. Dishonest market practices, which are mentioned in this provision, are in fact the result of the actions of private parties, and not of the state.

The fourth type of horizontal relations that are regulated in the Polish Constitution are relations between an individual and a private entity performing a specific public task. The result of Art. 61, para. 1 of the Polish Constitution is that every citizen of Poland has the right to obtain information on the activities of “other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury”. The information that can be demanded by the citizen from these private entities is public information, and it has the same status as the information that the citizen may demand from the organs of public authority as well as from persons discharging public functions. Similarly, Art. 63 of the Polish Constitution grants everyone the right to submit petitions, claims, and motions in the public interest, in their own interest or in the interests of another person to “organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration”. In this case the claim is directed to a private entity that is performing a specific task on behalf of the state. Such entities, according to Art. 63 of the Polish Constitution, are obliged to consider the petitions, claims, and motions in the same way as the public authorities.

The above considerations lead to the conclusion that some constitutional provisions regarding rights and freedoms more or less clearly make a private entity an obliged entity⁶. However, attention should be paid to the fact that only in two cases does the Constitution of the Republic of Poland directly talk about the obligations of a private entity towards another private entity. According to Art. 31, para. 2 of the Polish Constitution, everyone is obliged to respect the freedoms and rights of others, while according to Art. 72, para. 3 of the Polish Constitution, people responsible for a child are, in the course of establishing the rights of the child, obliged to listen to and, if possible, take into account the child's opinion. While the latter provision has a narrow scope of use, the former is one of the general principles of the rights and freedoms of persons and citizens. This is indicated by its appearance in the subsection entitled "General principles", which is part of chapter II. In Polish legal doctrine, Art. 31, para. 2 of the Polish Constitution clearly means that the Constitution is seeking to provide for the protection of human rights in horizontal relationships. There can only be controversies about the way in which these rights are realized in relations between private subjects⁷. In other words, it is possible to read Art. 31, para. 2 of the Polish Constitution in a broader perspective, as the legal basis for the horizontal effect of all constitutional rights and freedoms, as long as, by their nature, they are not limited to vertical relationships. A similar position seems to be taken by the Polish Constitutional Tribunal. In its judgment of 29 April 2003, file Ref. No. SK 24/02, concerning the constitutionality of the provision limiting parties' freedom in relation to the content of lease agreements, the Tribunal stated that the obligation to respect human freedom applies, in accordance with Art. 31, para. 2 of the Polish Constitution, not only to relations between a citizen and the state, but also to relations between two citizens. Reading Art. 31 in the broadest possible way results in the conclusion that nobody should be forced to conclude, or prohibited from concluding, an agreement, or be forced to choose a particular contractor or to accept particular provisions in a contract, unless the law provides otherwise. This limitation affects everyone equally. With this understanding, human freedom regulated by Art. 31, para. 2 of the Polish Constitution, constituting of course only some "part" of the whole human freedom, is subject to constitutional protection. Further on in the same judgment, the Tribunal stated that the relationship between the principle of the freedom of contracts and the constitutional guarantee of the protection of human freedom consists of the fact that the obligation of respect for freedom is imposed by the Constitution on all parties who are entering into legal relations, and also to all subjects under the civil law. As the Tribunal emphasized, in accordance with Art. 31, para. 2 of the Polish Constitution everyone is obliged to respect the freedoms and rights of others.

3. Constitutional provisions that can be used in horizontal relations

In addition to the provisions described previously that directly regulate horizontal relations, other regulations of the Constitution of the Republic of Poland could be divided into two groups. The first group could include those provisions that regulate only vertical relations; these remain outside the scope of my interests in this paper. The second group could include those regulations that establish rights and freedoms that can act in both the vertical and the horizontal directions, such as freedom of speech, freedom of assembly, and freedom of association. Traditionally, it was assumed that, in its regulation of this type of right or freedom in the constitution, the state was obliged to respect and not to infringe those rights. However, these rights and freedoms are currently violated more often by private entities than by the state, especially by a state with a democratic system. We can point to at least three reasons

⁶ See also: FLORCZAK-WĄTOR, M. *Horyzontalny wymiar praw konstytucyjnych*. Cracow, 2014, p. 346–349.

⁷ WOJTYCZEK, K. *Horyzontalny wymiar praw człowieka zagwarantowanych w Konstytucji RP*. *Kwartalnik Prawa Prywatnego*, 1999, № 2, p. 229; KUBIAK. *Prawo do równego traktowania*. In BANASZAK, B.; PREISNER, A. (eds.). *Prawa i wolności obywatelskie w Konstytucji RP*. Warsaw, 2002, p. 135.

for this situation. First, we can witness the emergence of more and more powerful private entities, including international corporations, transnational non-governmental organizations, and global regulatory authorities. These entities have the capacity to subordinate individuals and thus to limit their rights and freedoms⁸. Second, it is a characteristic of the free market economy aspiration of economic entities that they wish to maximize their profits and pursue their own interests, and this often takes place at the cost of consumers or employees, and therefore also in violation of the rights and freedoms of these groups. Third, the increasingly widespread privatization of public tasks, which affects such areas of life as the health service, education, the power industries, or the prison system, means that the rights and freedoms of people for whom these services are provided are not protected to the extent that they used to be⁹. As a result of all of these factors, the lives of individuals are primarily threatened by the activities of private actors rather than those of public authorities. It is private entities that deprive individuals of life, interfere with their privacy, limit their freedom of speech and disturb peaceful assemblies. Therefore the contemporary democratic state has shifted its position from being a violator of individual rights to being a guarantor of those rights, and the new sources of threats to individual rights mentioned above imply the need to expand the scope of the state's duties and responsibilities. These responsibilities go beyond traditional vertical relations and enter the area of horizontal relations.

From this perspective, one should look at the many provisions of the Constitution of the Republic of Poland that could be applied in both vertical and horizontal relationships. The entitled subject in the light of these regulations is always an individual, as the only entity that can be the beneficiary of constitutional rights and freedoms, while the obliged entity is the state, although it could also be a different private entity. In Polish legal doctrine, however, there is a dispute as to whether these regulations can really be used in horizontal relations. However, before this dispute is discussed, it is worth presenting more detail on the content of these provisions.

First, some provisions of the Constitution of the Republic of Poland include an obligation to undertake a particular action to implement a constitutional right or freedom, but do so in an impersonal way, without indicating the person who is to carry out the obligation. These are primarily the provisions that formulate an obligation to "ensure" a certain freedom. Some of these provisions use the formula that a certain right or freedom "shall be ensured to everyone". As examples of this type of constitutional provision one could consider Art. 41, para. 1 ("Personal inviolability and security shall be ensured to everyone"), Art. 53, para. 1 ("Freedom of faith and religion shall be ensured to everyone"), Art. 54, para. 1 ("The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone"), and Art. 57 ("The freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone"). In other provisions the wording used is "shall be ensured", with no indication of the beneficiary of the particular right or freedom. This type of constitutional provision could be illustrated by Art. 49 ("The freedom and privacy of communication shall be ensured"), Art. 50 ("The inviolability of the home shall be ensured") or Art. 70, para. 5 ("The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute"). The obligation to ensure freedom is the obligation of a subject other than the one enjoying this freedom. The obliged entity can therefore be the state, if the term "shall be ensured" of the particular right is understood to mean "shall be provided". However, the obliged entity can also be an individual, if the "ensuring" of the right is understood only to mean "respecting" that right.

Second, some provisions of the Constitution of the Republic of Poland not only do not indicate the obliged subject, but also do not directly determine the obligations that are the correlate of the right or freedom formulated in them. Provisions of this nature use a formula according to which particular

⁸ CLAPHAM, A. *Human Rights in the Private Sphere*. Oxford, 2002, s. 137–138.

⁹ BARAK, A. *Proportionality. Constitutional Rights and Their Limitations*. Cambridge, 2012, s. 425.

subjects “have the right” to perform a certain activity. As an example of this type of provision we can point to Art. 32, para. 2 (“National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity”), Art. 47 (“Everyone shall have the right to legal protection of his private and family life, of his honor and good reputation and to make decisions about his personal life”), and Art. 64, para. 1 (“Everyone shall have the right to ownership, other property rights and the right of succession”). In the case of freedoms and economic, social, and cultural rights, the formula “the citizen has the right to...” is usually associated with an obligation imposed on the state to specify in a statute the scope and the form for how that right is to be realized. This type of regulation could be illustrated by Art. 67, para. 1 (“A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute”), or Art. 67, para. 2 (“A citizen who is involuntarily without work and has no other means of support, shall have the right to social security, the scope of which shall be specified by statute”). From this type of provision one could infer only an obligation on private subjects to respect the statutory rights of others, and therefore – as in the case of the first group of regulations mentioned above – only an obligation of a negative character.

Third, some constitutional provisions formulate orders and prohibitions without indicating the obliged subject, which leads to the conclusion that they can be addressed not only to public authorities, but also to private individuals. This group of provisions includes the second sentence of Art. 31, para. 2 (“No one shall be compelled to do that which is not required by law”) and Art. 32, para. 2 (“No one shall be discriminated against in political, social or economic life for any reason whatsoever”). The prohibitions formulated in these provisions, that is, the prohibition on the use of force and the prohibition on discrimination, can be addressed not only to the state, but also to private subjects. Another provision belonging to this group is Art. 30 of the Polish Constitution, according to which human dignity is inviolable. The resulting prohibition on the violation of human dignity has – like the prohibitions mentioned above – a universal character, which means that its addressees are not only public authorities, but also individuals¹⁰. We should read other prohibitions included in the Constitution in the same way, especially those expressed in Art. 39 (“No one shall be subjected to scientific experimentation, including medical experimentation, without his voluntary consent”), Art. 40 (“No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment”), Art. 51, para. 1 (“No one may be obliged, except on the basis of statute, to disclose information concerning his person”), and Art. 53, para. 5 (“No one shall be compelled to participate or not participate in religious practices”).

It is worth discussing the dispute about the possibility of using this type of constitutional regulation in horizontal relations by looking at the example of the legal regulation – widely discussed in Poland – concerning the prohibition on the corporal punishment of children by their parents. Until August 1, 2010, no such prohibition was included in the ordinary legislation. However, then and now Art. 40 of the Polish Constitution, which states: “It is prohibited to use corporal punishment” applied. The general content of this prohibition allows us to formulate the conclusion that it can be applied to both vertical and horizontal relations¹¹. With this interpretation of Art. 40 one should reach the conclusion that Art.

¹⁰ BANASZAK, B. Prawa człowieka i obywatela w nowej Konstytucji Rzeczypospolitej Polskiej. *Przegląd Sejmowy*, 1997, № 5, p. 57; GARLICKI, L. Uwagi do art. 30. In GARLICKI, L. (ed.). *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa, 2003, p. 19; SAFJAN, M. Refleksje wokół konstytucyjnych uwarunkowań rozwoju ochrony dóbr osobistych. *Kwartalnik Prawa Prywatnego*, 2002, № 1, p. 227; TULEJA, P. *Stosowanie Konstytucji RP w świetle zasady jej nadrzędności (wybrane problemy)*. Cracow, 2003, p. 125.

¹¹ BOSEK, L. *Gwarancje godności ludzkiej i ich wpływ na polskie prawo cywilne*. Warsaw, 2012, p. 123; WYROZUMSKA, A. Direct Application of the Polish Constitution and International Treaties to Private Conduct. *Polish Yearbook of International Law*, 2001, nr. 25, p. 8.

96,¹ which was added to the Family and Guardianship Code with effect from 1 August, 2010 and which reads: “People exercising parental authority and who have care and custody over a minor are prohibited from using corporal punishment”, did not establish any prohibition, but only repeated a prohibition that already existed as a result of Art. 40 of the Polish Constitution. However, if we adopt a different interpretation and accept that this latter provision applies only to vertical relations, then Art. 96¹ of the Family and Guardianship Code would have a constitutive character, stating an analogous prohibition within horizontal relations, namely the relations between parents and children. It is worth stressing that the authors of this new provision held to this latter view. The explanatory statement to this aforementioned bill stated that the prohibition on the use of corporal punishment “aims to change the attitudes of society and to indicate other educational methods. At present, in the existing legal regulations there is no provision which would directly refer to the prohibition on hurting children”. A different position on this issue, however, was presented in the expert opinions that needed to be prepared for the legislative process. A. Sakowicz stated that the “regulation of Art. 96 of the Family and Guardianship Code does not implement fundamental changes in the plane of the protection of minors from punishment. The prohibition on using corporal punishment results *expressis verbis* from Art. 40 of the Constitution of the Republic of Poland. This legal norm also refers to the use of corporal punishment by parents towards minors, recognizing such behavior to be unlawful”¹².

In my view, Art. 40 of the Constitution of the Republic of Poland is an example of a provision that could and should have been directly applicable to horizontal relations, including the relations between parents and children. Before 1 August, 2010, the conditions were in place for the direct application of this constitutional provision, because the prohibition on the use of corporal punishment that results from it is clear and precise, and prior to that date it was not the subject of separate statutory regulation.

4. The significance of the constitutionalization of horizontal relations

The foregoing considerations lead us to the conclusion that the Constitution of the Republic of Poland – like many other European constitutions – regulates not only vertical relations (those between the individual and the state), but also horizontal relations (those between individuals). Therefore, there is a question of the significance of the constitutionalization of horizontal relations in the practice of applying constitutional provisions.

In accordance with Art. 8, para. 2 of the Polish Constitution, constitutional provisions are applied directly, unless the Constitution provides otherwise. Therefore, the first conclusion is that the constitutional provisions mentioned above that regulate the relations between private individuals should be used directly. The concept of the direct application of the Constitution of the Republic of Poland, described in Art. 8, para. 2, is broadly defined in Polish legal doctrine to include both the independent application of the constitutional provision, and the application of this provision together with a statutory provision¹³. The second conclusion that should be drawn is therefore that constitutional provisions regulating horizontal relations can also sometimes be applied by themselves, and sometimes must be applied only with a statutory regulation. The first conclusion is about the direct horizontal application of constitutional rights, and the second is about their indirect horizontal application. Both models of the horizontal application of constitutional rights have been broadly described in western legal literature¹⁴.

¹² SAKOWICZ, A. Opinia prawna z 27 stycznia 2010 r. dotycząca niektórych przepisów projektu ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw. Druk sejmowy, № 1698, p. 8.

¹³ FLORCZAK-WĄTOR, M. *Horyzontalny wymiar* <...>, p. 317–339.

¹⁴ See among others: FRIEDMANN, D.; BARAK-EREZ, D. *Human Rights in Private Law*. Oxford, 2002; SAJO, A.; UITZ, R. (eds.). *The Constitution in Private Relations: Expanding Constitutionalism*. Utrecht, 2005; ZIEGLER, K. J. (ed.).

The problem of the direct horizontal effect of constitutional rights can only be considered in relation to those rights that can be applied to private relations. This type of right must at the same time be stated in constitutional provisions that can be applied alone, and thus – in the event of a dispute between individuals – that can constitute an independent legal basis for judicial decisions. The application of constitutional regulations without any reference to a statute requires two conditions to be met. First, the constitutional provision setting out the given right or freedom must be formulated in a precise and clear way, so that it is possible to settle the individual matter on the basis of that provision alone. Second, the matter regulated by the constitutional provision cannot be the subject of an applicable statutory provision, as the direct application of the constitutional provision cannot lead to the statutory provision being ignored. This results from Art. 178, para. 1 of the Polish Constitution, which states that judges, within the exercise of their office, shall be independent and subject only to the Constitution and statute.

The direct horizontal effect of constitutional rights is undoubtedly exceptional in its character. This is first because most constitutional provisions stipulating rights and freedoms are developed in statutory regulations, which in the case of a dispute between individuals become the legal basis for a judicial decision. Second, not all constitutional provisions stating rights and freedoms are precise enough to be the basis of a judicial decision in an individual case. However, this does not mean that, on the grounds of the Constitution of the Republic of Poland, it is not possible to adopt and use the concept of the direct horizontal action of constitutional rights. There are still constitutional rights that are not sufficiently regulated in statute, such as the right to bring a petition. On the other hand, in the case of constitutional rights that have become subject to statutory regulation, there can be a need for direct horizontal application when the existing statutory regulation turns out to be incomplete or, because it is held to be unconstitutional by the Constitutional Tribunal, loses its existing force. If the first of the conditions for the direct application of constitutional provisions, consisting of the lack of statutory regulation, is met, then what should be considered is only whether the constitutional right or freedom is precise enough to be used directly.

There are much greater possibilities, in the Polish constitutional reality, for the use of the model of the indirect horizontal effect of these rights and – which is treated sometimes to be an example of the first situation – the model of the positive obligations of the state in horizontal relations¹⁵. When it comes to the first of these models, the fertile ground for its use is created both by the way the Constitution is saturated with axiology and by the passion of the Polish parliament for the use of general clauses and vague phrases in statutory provisions. The confluence of these two factors makes the infiltration of constitutional values into private law possible and necessary as the result of the direct application of the Constitution to statutory provisions containing open notions¹⁶. For these reasons, the indirect horizontal effect of constitutional rights is perceived by some commentators on Polish legal doctrine to be undisputed. On the other hand, the application of the model of positive obligations of the state in horizontal relations is favored by the extensive – at the level of the Polish Constitution – protective

Human Rights and Private Law. Privacy as Autonomy. Oregon, 2007; OLIVER, D.; FEDTKE, J. (eds.). *Human Rights and the Private Sphere. A Comparative Study*. New York, 2007; BREMS, E. (eds.). *Conflicts Between Fundamental Rights*. Antwerp, 2008; REID, E.; VISSER, D. *Private Law and Human Rights*. Edinburgh, 2013.

¹⁵ See also FLORCZAK-WĄTOR, M. *Horyzontalny wymiar <...>*, p. 417–420.

¹⁶ On the issue of the constitutionalization of private law see: CHEREDNYCHENKO, O. O. Fundamental rights and private law: A relationship of subordination or complementarity? *Utrecht Law Review*, 2007, № 3, p. 4; NIEUWENHUIS, H. Fundamental Rights Talk. An enrichment of legal discourse in private law? In BARKHUYSEN, T.; LINDENBERGH, S. D. (eds.). *Constitutionalisation of Private Law*. Leiden, 2006, p. 9; SMITS, J. *Private Law and Fundamental Rights: a Sceptical View*. In BARKHUYSEN, T.; LINDENBERGH, S. D. (eds.). *Constitutionalisation of Private Law <...>*, p. 9–22.

regulations, from which results the positive obligation of protection by the state of one of the parties in a horizontal relationship against the harmful effects of the other party. These harmful actions can also take the form of violations of constitutional rights and freedoms. In this case, the state is obliged not only itself to respect these rights and freedoms, but also to guarantee their protection, and thus to force the respect of them by the activity of individuals.

Conclusions

Regulation on the constitutional level of horizontal relations is currently a commonly occurring phenomenon. It gives individuals the opportunity to invoke constitutional provisions in disputes with other individuals. Constitutional provisions can less often constitute the independent basis of judicial decisions, and more often they will be one of the elements of this legal basis (next to statutory provisions). An appeal to constitutional provisions by the parties to a horizontal relationship will always mean that the significance of these provisions becomes greater. This means taking the Constitution down from its pedestal and involving it in solving specific problems in the daily lives of citizens. Thus, the character of these provisions as guarantees of the rights and freedoms of the individual that are regulated in them will have a new and wider dimension.

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HORIZONTALIŲJŲ SANTYKIŲ REGULIAVIMAS LENKIJOS RESPUBLIKOS KONSTITUCIJOJE

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S a n t r a u k a

Šiuo metu konstitucinis horizontaliųjų santykių, tai yra privačių asmenų santykių, reguliavimas yra dažnas demokratinėse šalyse reiškinys. Lenkijos Respublikos Konstitucija reglamentuoja darbuotojų ir darbdavių, tėvų ir vaikų, verslininkų ir vartotojų santykius. Ji taip pat reguliuoja ūkio vienetų ir privačių subjektų, kuriems valstybė pavedė konkrečių viešųjų užduočių vykdymą, santykius. Taip pat kitos Konstitucijos nuostatos gali būti naudojamos horizontaliesiems santykiams reguliuoti. Šiame darbe siekiama nustatyti, kokius horizontaliuosius santykius reguliuoja Konstitucija, kaip toli siekia šis reglamentavimas ir kokia yra jo reikšmė. Bendro pobūdžio išvadoms, tinkančioms ir kitokio pobūdžio santykiams reglamentuoti Europos šalių konstitucijų lygmeniu, formuluoti atspirties taškas yra Lenkijos Respublikos Konstitucijos tekstas. Darbo autorė svarsto galimybę taikyti įvairius subjekto teisių horizontaliajai veiklai modelius remiantis Lenkijos Respublikos Konstitucija. Ji daro išvadą, kad privačių asmenų santykių reguliavimas konstituciniu lygiu suteikia galimybę subjektams taikyti konstitucines nuostatas jų ginčams su kitais subjektais.

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