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## Civil society in Poland in the 1990s. Ideas and their reflection in the Constitution and in jurisprudence

Polish society, similarly to other nations of Central and Eastern Europe, used to be permeated with Marxist canons in the field of attitudes towards the state and its institutions. Under the conditions of the so-called transformation, it started to show interest in the adaptation of Western European political solutions, especially those bringing to the fore the role of “civil society”<sup>1</sup> in the political and legal reality. The emergence of this trend, however, gave rise to the ideological problem associated with the choice of an appropriate model of a democratic state — a model adequate to the mentality of Poles and one that would allow them, in time of political and economic changes postulated at the turn of the 1980s and 90s, to find their own identity despite the lack of thoroughly prepared social changes.<sup>2</sup>

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<sup>1</sup> It is an idea referred to throughout history in various social and political orders as: *koinonia politike*, *societas civilis*, civil society or *bürgerliche Gesellschaft*. It was characterized by ambiguity within the scope of its definition, and is no doubt the subject of interest in many fields of science, such as: political and legal doctrine, political science, sociology, historical sciences. In time, it came to be regarded as a normative category (especially at the level of political philosophy, it is a postulate for efficient relations between the citizen, the society, and the state) or a descriptive one (in terms of social and political sciences, treated as a particular type of social organization used for the analysis of social phenomena). Attention should also be paid to the semantic connotations of this term, as the term “society” has strong sociological implications, and the adjective “civil” — much more normative ones. See D. Pietrzyk-Reeves, *Spoleczeństwo obywatelskie*, [in:] B. Szlachta (ed.), *Słownik społeczny*, Kraków 2004, p. 1281; J. Przedańska, *Spoleczeństwo obywatelskie jako filozoficzna idea*, [in:] J. Blicharz, J. Boć (eds), *Prawna działalność instytucji społeczeństwa obywatelskiego*, Wrocław 2009, p. 14.

<sup>2</sup> At this point, it is worth recalling the mechanism of political changes in France described by the eminent sociologist and statesman Alexis de Tocqueville in *Dawny ustrój i rewolucja* (Warszawa 1970) and, against their background, the ills of society transformation in the era of the 1789 bourgeois revolution. This mechanism is an excellent study for analyzing the behavior characteristic of

The major trends that had been developed by the legal culture until then met with both support and opposition. One of them had already been known in antiquity as the republican (classical)<sup>3</sup> tradition; there were also subsequent trends: ones of a modern liberal<sup>4</sup> origin, the opposing Hegelian trend,<sup>5</sup> as well as their modifications. An effort to overcome the divergence of the signaled political forms and adapt them to the Polish reality was taken, rather clumsily, in the important years 1989–1997 — the time of the transformation of the People’s Republic of Poland into the Republic of Poland — a state with the characteristics of the rule of law. The need to appeal to the positive experiences of the First and Second Republic<sup>6</sup> was postulated; on the other hand, there were also aspirations to create a modern (but also peculiar) political culture of an independent state — a culture congruent to the European standards of the late twentieth century. In the new, as it seemed, post-communist reality of Central and Eastern Europe, it became extremely important to open up to a mature discussion of philosophical and political character, which would allow for formulating the guiding ideas for newly forming

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the citizens and the elites of the Republic of Poland after 1989. See also D. Pietrzyk-Reeves, *Idea społeczeństwa obywatelskiego. Współczesna debata i jej źródła*, Wrocław 2004, pp. 320–321.

<sup>3</sup> In this model, attention should be paid, first of all, to the status of the citizen — a member of the civil community — in his relationship to the state. In this context, we assume the existence of virtuous, good citizens devoted to the common good, who are able to skillfully combine political duties with freedom practised at the level of public sphere. This attitude allows them to achieve genuine satisfaction in the political community, which equates personal happiness. See D. Pietrzyk-Reeves, *Spoleczeństwo obywatelskie...*, p. 1281; and K. Trzeciński, *Obywatelstwo w Europie. Z dziejów idei i instytucji*, Warszawa 2006, pp. 57–62.

<sup>4</sup> In the case of this trend, in its current dominant meaning, the rights and freedoms of citizens are mostly exposed in their status, giving rise to a claim for their protection by the state. Autonomous entities, identical with equal citizens, spontaneously or collectively aspire to individual or general development through various initiatives and intermediate bodies, by undertaking co-operations independent of the state. This idea, therefore, reduces the role of the state to establishing institutions and procedures designed to ensure effective social order and civil liberties. See D. Pietrzyk-Reeves, *Współczesny kształt idei społeczeństwa obywatelskiego*, [in:] B. Krauz-Mozer, P. Borowiec (eds), *Czas społeczeństwa obywatelskiego. Między teorią a praktyką*, Kraków 2006, p. 21; K. Trzeciński, op. cit., pp. 169–173.

<sup>5</sup> The Hegelian tradition treated civil society (called also “the state of necessity and common sense”) as clearly distinct from the political community, as a necessary element of the historical process, which “surmounts itself” (*Aufhebung*) and can achieve absolute unity only under the auspices of public institutions. Since only the state, as the highest form of people association, has full characteristics of an ethical ideal, in which libertarian rights of individuals can be realized while remaining in correlation with the general interest. The Hegelian tradition was also recalled, though somewhat critically, by Karl Marx and his apologists. For more see P. Szymaniec, *Zarys problematyki wolności w myśli polityczno-prawnej G.W.F. Hegla*, [in:] E. Kozerska, P. Sadowski, A. Szymański (eds), *Idea wolności w ujęciu historycznym i prawnym. Wybrane zagadnienia*, Toruń 2010, pp. 284–294; and on the philosophy of Karl Marx and its evolution see A. Miś (ed.), *Filozofia współczesna. Główne nurty*, 3rd ed., London 2000, pp. 65–88.

<sup>6</sup> For more see R. Graczyk, *Konstytucja dla Polski. Tradycje, doświadczenia, spory*, Warszawa 1997.

democracies, resulting in the creation of a stable ruling elite and effective public institutions. They were to provide an alternative to the existing ideology, which dictated — in relation to Western civilization — a completely different structure of political order and of the status of citizens.<sup>7</sup> The deficiencies of the discourse on the future shape of Polish democracy revealed dilemmas in determining the content and function of the state in relation to society, especially in the context of political freedoms and obligations of citizens.<sup>8</sup> As a sociologist Krzysztof Murawski correctly points out, the debate on the issue, led by the then establishment, was oriented towards the design of the future state (identified with the administrative institutions), at the same time marginalizing the role of potential of the bottom-up organizing society and its possible participation in the transformation of the public policy of Poland. Former opposition, centered around the true ethos

<sup>7</sup> K. Murawski, *Państwo i społeczeństwo obywatelskie. Wybrane problemy rozwoju demokracji w Polsce 1989–1997*, Kraków 1999, p. 1718.

<sup>8</sup> It is fitting at this point to recall that this important distinction between the conceptual category of the state and civil society is the legacy of the eighteenth-century political philosophy and was initiated, among others, by John Locke in *Two Treatises of Government* (1690) (translated into Polish by Z. Rau, Warszawa 1992), and Thomas Paine in *The Common Sense* (1776). In the next era, it became the subject of comments for some of the opponents (mainly of left-wing provenance) and supporters. In the second half of the twentieth century it experienced its Renaissance thanks to the anti-regime opposition in Central and Eastern Europe and the political changes undertaken in South America and Africa. Against the background of these events, a number of concepts in the political discourse appeared, often critical of or different from previous interpretations, perceiving civil society from the perspective of political experiences of the twentieth century. The rebirth of the reflection on this idea was encouraged not only by the situation of the Soviet satellite states, but also by the deficiencies of the democratic system noticeable in Western Europe. John Keane's theory played a significant role in this context. In his works *Democracy and Civil Society* (1988) and *Civil Society and the State* (1988), he argued, in opposition to the skeptics of the idea of civil society (e.g. A. Seligman, J. Ehrenberg, H. Wood), that this modern concept can be used to find balance between the role of the state and the non-governmental sphere, especially in the conditions of polemics with the discredited theory of the "welfare state" and with despotic regimes (socialist, fascist and nationalist), but also in terms of growing effects of neo-liberalism. Analyzing the term in a descriptive sense, Keane treated it as the perfect set of dynamic, self-organizing and autonomous NGOs, often in strained relations with each other, demanding protection from positive law. What is more, in his deliberations he made an attempt to construct the idea of model "global civil society." For more see Ł. Stach, *Spoleczeństwo obywatelskie Johna Keane'a*, [in:] B. Krauz-Mozer, P. Borowiec (eds), op. cit., pp. 103–121. Contemporary theorists of this idea, remaining under the influence of left-wing Jürgen Habermas, are Jean Cohen and Andrew Arata (at the beginning of the 1980s, the author was strongly interested in the situation of the Polish political opposition, devoting his attention to it in a number of works). The American philosophers mentioned before advocated a fairly controversial view of civil society as situated outside the country, as well as an entity independent from the economic sphere, whose core are families, associations, social movements, and other forms of social communication. See J. Cohen, A. Arato, *Civil Society and Political Theory*, Cambridge 1992. Similar definition is given in P. Broda-Wysocki, *Teoretyczne podstawy funkcjonowania społeczeństwa obywatelskiego*, [in:] M. Witkowska, A. Wierzbicki (eds), *Spoleczeństwo obywatelskie*, Warszawa 2005, p. 5.

of Solidarity,<sup>9</sup> personified the aspirations of the whole society to implement the expressive slogans of liberty, fraternity, and self-organization; nevertheless, it was not able to develop a thorough transformation program that could be carried out independently of the current state system. Recognizing the special status of the state (which was also characteristic of other countries freeing themselves from the influence of Soviet Russia), the opposition circles not only adopted the legacy of communism, but also agreed to maintain its legitimacy to determine the strategy of political action. Simultaneously, perceiving the state as a political system still supported by political coercion, they placed it on the opposite end against the idea of civil society.<sup>10</sup> In this way, the sanctioned, seemingly strong and bureau-

<sup>9</sup> This mass social movement, known as the Independent Self-Governing Trade Union “Solidarity” (NSZZ “Solidarność”) and led by Lech Wałęsa, was created in 1980, based on a number of strike committees, including the Inter-Enterprise Strike Committee in Gdańsk; later, they turned into Solidarity’s founding committees and supported the demands of the striking shipyard workers. Those were mainly demands for economic reforms, and social and trade unions in Poland. Its proponents showed a diverse mix of ideological worldviews and took inspiration from Christian liberal, Hegelian, and socialist ideas (including Karl Marx, Antonio Gramsci), or even the intellectual heritage of the socialist-anarchist Edmund Abramowski. We should also mention the strength of the impact of social movements (in addition to that of the Roman Catholic Church) created in the 1970s, which undoubtedly became part of the opposition against the ruling government of the People’s Republic and contributed to the creation of intellectual counter-elite, which, after 1989, played a key role in shaping the political order of the Republic of Poland. Here, we have in mind an association of intellectuals called Polish Independence Agreement [Polskie Porozumienie Niepodległościowe (PPN)] of 1976, Workers’ Defense Committee [Komitet Obrony Robotników (KOR)] of 1976, which brought together 38 members (including Bogdan Borusewicz, Leszek Kołakowski, Edward Lipiński, Antoni Macierewicz, Antoni Pajdak, Zbigniew Romaszewski, Henryk Wujec, and others) and in 1977 transformed into the Committee for Social Self-Defense [Komitet Samoobrony Społecznej (KOR)], where two actors played a distinctive role in the future political changes in Poland — Jacek Kuroń and Adam Michnik; the movement worked also with Czech dissidents centered around “Charter 77”; moreover, the center-right Movement for Defense of Human and Civic Rights [Ruch Obrony Praw Człowieka i Obywatela (ROPCiO)] was formed in 1977, headed by Andrzej Czuma and Leszek Moczulski. These associations objected to the repressive policies of the Polish state, which were disrespectful of human dignity, human and civil rights, disregarded national traditions, or demanded the amnesty for those repressed for political, religious and ideological reasons, as well as the institutionalization of the protection of fundamental political, social and economic rights. See W. Roszkowski, *Historia Polski 1914–2005*, Warszawa 2007, pp. 124–130.

<sup>10</sup> The polarization of the concepts in question, mentioned by K. Murawski and E. Górski and known in political philosophy thanks to G. Hegel, K. Marx, and A. Gramsci, found its vulgar embodiment in the Soviet country and its subordinate satellite countries. K. Murawski, op. cit., 48 ff.; and E. Górski, *Rozważania o społeczeństwie obywatelskim. I inne studia z historii idei*, Warszawa 2003, pp. 5 ff. The mentioned model of relations between civil society and the state shows a different approach to the concept advocated by liberals in the spirit of J. Locke (see J. Locke, op. cit.; K. Trzeciński, op. cit., pp. 121–123). To differentiate the two concepts, Locke assumed their parallelism, because the state is the product of a conscious and voluntary (or natural, according to assumptions of, for example, Alexis de Tocqueville and John Stuart Mill) actions of autonomous entities, self-organizing in the name of individual or common interests (and values, as postulated by the French statesman). Hence the character of the state, according to Locke, is determined by intentions

cratic state that initiated reforms in the country (reforms of public authorities, central and local governments, the military, state-owned enterprises, etc.) was not capable of effective management of public affairs and the economic system, therefore becoming an institution that inhibited the transformation and the rebirth of the culture of political identity. This phenomenon was also seconded by visible deficiencies in the bottom-up self-organization of society, in spite of the genuine enthusiasm and hopes associated with the need to carry out radical changes, particularly with regard to the agreements on the principles of exercising power and public policy. The political opposition, by treating itself as a representative of the civil society<sup>11</sup> and by referring to ideals formulated in general terms, demanded representative (and not participating) democracy; at the same time, however, it distanced itself from the state (thereby perpetuating the division into “us” and “them”). Despite the social mobilization stimulated by the Solidarity movement, the opposition adopted a strategy of moderate protest and was more concerned with maintaining its status than with a “competent implementation of the principles of an open democratic system.”<sup>12</sup> The reasons for this attitude should be sought in the projects and activities of the opposition movements of the 1970s and 80s, especially those of left-wing provenance. They often identified civil society with all alternative social activities that had a trait of clear opposition against the prevailing, repressive state control system (e.g. in the field of religion, culture, freedom of speech and expression, resistance to collectivization, or even in the form of reprehensible phenomena, such as corruption of officials or the development of the “grey zone”).<sup>13</sup> Representing such “anti-political” ideas (also called “non-political politics” or “non-institutional politics”), it was identified not with the idea of an independent democratic state, but (mostly in its negative sense) with a community manifesting dissatisfaction (in the form of non-violent Gramscian revolution) with the arbitrary power of the communists. It should be noted that, as an alternative to the structures of the state, they demonstrated the need to build a stand-alone civil society based on pacifist ethical values and spon-

expressed in the form of a compromise by the citizens in order to give them the opportunity to use individual rights; the state is not perceived as an institution oppositional to the active community created by autonomous individuals.

<sup>11</sup> The idea of civil society in Poland gained popularity due to Solidarity, especially after the signing of the Gdańsk Agreement in August 1980, which recognized the leading political role of the Communist Party, but only in the country — as was emphasized by the opposition — and not in the society. Special merits for its propagation should be given to Jacek Kuroń. See K. Rogaczewska, *Recepcja myśli programowej E. Abramowskiego w koncepcji J. Kuronia*, [in:] W. Bokajło, K. Dziubka (eds), *Spółeczeństwo obywatelskie*, Wrocław 2001, p. 156.

<sup>12</sup> W. Morawski, *Instytucjonalizacja polityczna w postsocjalistycznej Polsce*, [in:] J. Kurczewska (ed.), *Zmiana społeczna. Teorie i doświadczenia polskie*, Warszawa 1999, p. 224.

<sup>13</sup> See P. Ogrodziński, *Spółeczeństwo obywatelskie — w kierunku przewidywań*, [in:] *Studia nad ładem społecznym*, vol. 2, Warszawa 1990, p. 57, quoted from K. Murawski, op. cit., p. 56. W. Morawski, op. cit., pp. 22–223. See opinions expressed on this matter by L. Kołakowski, *Cztery procent spisanej historii Polski*, [in:] *40 lat komunistycznej władzy w Polsce*, London 1986.

taneously organizing itself in all kinds of professional and trade union relations (in the spirit of cooperative socialism), but still lacking the political aspirations for taking over the power in the state.<sup>14</sup> In Solidarity, the dominant project was one of an evolutionally and morally transformed model of the Polish society (the so-called “rebuilt society”). However, there were also ideas for its changes in the spirit of a liberal civil movement (motivated mostly in its economic aspect). Unlike the left-wing part of the opposition, they stressed the need to build a civil society centered around the concept of the rule of law and the idea of economic freedom. The so-called liberal opposition did not perceive the state as an oppressive institution, but as one encouraging the process of social growth in every sphere of existence. Here, we have in mind the demands of the so-called Gdańsk liberals. They supported the idea of civil society acting on the basis of the free play of the

<sup>14</sup> The above-mentioned dichotomy of state and civil society was advocated by one of the leading oppositionists in the Solidarity movement, Adam Michnik, who remained under the influence of the Italian communist A. Gramsci. The reception of Gramsci’s demands can also be seen in projects of political changes formulated by the movement at the turn of the 1980s and 90s. They promoted the idea of civil society based on the dynamically self-organized labor movements, which, by its constant battle with the state, evolutionally imposes reforms on it. In particular, the concept of Michnik’s “new evolutionism” (inspired in a sense by L. Kołakowski’s theses on the necessity of resistance and self-defense of society against the domination of the irreformable regime party) included empowerment of society, which, through its maturity, (stimulated by Christian morality and intellectual tradition) is able to engage in a dialogue with the government, being independent from it because of the network of political, syndicalist, cultural, publishing, and media non-governmental institutions. In accordance with the principle of gradualism, society was to renew the community ties, separate from both the state and the economic sphere. Another well-known representative of this movement, Jacek Kuroń, referring in his demands mainly to E. Abramowski, also paid close attention to the development of civil society based on the “self-limiting revolution,” which is to be a process of gradual limiting of the state through informal social relationships pervaded with the idea of fraternity, solidarity, freedom of conscience, personal inviolability and equal rights. At the same time, it should be noted that E. Abramowski, J. Kuroń, A. Michnik and part of the Polish “revolutionaries” from the Solidarity movement (e.g. Kornel Morawiecki) claimed that systemic change should be preceded by moral transformations; they were not able, however, to provide the methods for any practical social initiatives, which was unfortunately revealed during Round Table Talks and its subsequent consequences. For more see J. Kuroń, *Notatki o samorządzie*, “Głos” 1, 1977; idem, *Zasady ideowe*, Paris 1978; A. Michnik, *Takie czasy... Rzecz o kompromisie*, London 1985. See K. Rogaczewska, op. cit., 158 ff.; eadem, *Koncepcja społeczeństwa obywatelskiego według Jacka Kuronia*, [in:] B. Krauz-Mozer, P. Borowiec (eds), op. cit., pp. 79–87; P. Ścigaj, *O podmiotowość społeczeństwa — idea społeczeństwa obywatelskiego w pracach Adama Michnika*, [in:] B. Krauz-Mozer, P. Borowiec (eds), op. cit., pp. 57–77, who defines Michnik’s concept as “the third path” and looks for its parallels to the above theory of Jean Cohen and Andrew Arata. In addition, J. Kuroń and A. Michnik (following the example of A. Gramsci, G. Sorel, E. Abramowski), and even some of the later liberals (J. Lewandowski and J. Szomburg) showed interest in the idea of civil society inspired by the self-organization of workers’ self-management — a society that controls economy, politics, and other important spheres of public life, but did not see any need for pluralism. A similar point is made by D. Pietrzyk-Reeves, *Współczesny kształt...*, 27. See P. Ogrodziński, *Pięć tekstów o społeczeństwie obywatelskim*, Warszawa 1991, p. 70; K. Murawski, op. cit., p. 58; E. Górski, op. cit., p. 45–49.

market under the conditions of a welfare state led by political elites controlled by society in the electoral process.<sup>15</sup> Here belong the ideas of the proponents of the classical liberalism program, as realized by the Real Politics Movement [Ruch Polityki Realnej] and by the Kraków intellectual M. Dzielski, promoting the idea of a libertarian society, spiritually reborn and made active in the economic sphere already under the conditions of cooperation with the government of the PRL.<sup>16</sup>

Eventually, in the Round Table Agreement (completed on April 5, 1989),<sup>17</sup> the oppositionist movement represented mostly its left-wing faction. It was based

<sup>15</sup> This group was centered mainly around “Przegląd Polityczny” (represented e.g. by Donald Tusk, Jan Krzysztof Bielecki, Janusz Lewandowski, Jan Szomburg) and ceased to exist in 1994, when the Liberal Democratic Congress [Kongres Liberalno-Demokratyczny] merged with the Democratic Union [Unia Demokratyczna]. In their first established principles, they advocated (in accordance with the thesis: ownership-market-entrepreneurship, and later also self-government-regionalization) general privatization and free market; moreover, they drew attention to civil liberties, institutional guarantees of democracy and recognized self-government as the foundation of the liberal-democratic order. They sought ideological inspiration in the concepts of the nineteenth-century critical liberalism, of German ordoliberals, Lord Acton, Friedrich A. von Hayek, Raymond Aron, Isaiah Berlin, Karl Popper, and Walter Lippman. In contrast to the oppositionists, instead of a dialogue between the oppressive authorities and the society organizing itself in various associations and reaching a compromise, they decided that change could only be made by organized pressure of Solidarity underground site committees. Hence, in 1988, they supported the strikes of workers. In time, the demands of neo-liberals were abandoned in favor of the ideas of Tocqueville, Mill and the ordoliberals on the self-organization of civil society acting for the common good under the leadership of the elite. They came to the conclusion that not all members of society are able to demonstrate an entrepreneurial spirit and responsibility for the obtained freedom, so they need the support of the state, which should create conditions for the popularization of opportunities in the pursuit of prosperity. For more see an interview with W. Duda (editor of “Przegląd Polityczny”, *Czy liberal jest patriotą*, “Gazeta Wyborcza” 27 October 2007, quoted from <http://wyborcza.pl/1,76842,4617667.html?as=1&startsz=x> (accessed on 13 March 2012). See W. Morawski, op. cit., p. 226.

<sup>16</sup> The concept of civil society promoted by the Gdańsk group met with scepticism on the part of the conservative-liberal association of the Real Politics Movement (registered in 1987 and in 1990 converted into a political party, the Conservative Liberal-Party Union of Real Politics), whose members were, in its early days, Ryszard Czarnecki, Stefan Kisielewski, Janusz Korwin-Mikke, Stanisław Michalkiewicz, Robert Smoktunowicz, and Andrzej Sadowski (focusing their attention mainly on the theory of low-cost minimal state based on the principles of free market, respecting individual rights — especially the right to private property), as well as the Kraków liberals led by Mirosław Dzielski (supporter of minimal state based on economic freedom and secondarily referring to democracy; in the name of such changes, he proposed an arrangement with the communist regime to preserve their political power) and Tadeusz Syryjczyk (he voiced views similar to M. Dzielski’s on the future of the Polish democracy). See R. Lis, *Fenomen narodzin społeczeństwa obywatelskiego w Polsce okresu schyłkowego komunizmu. Mirosława Dzielskiego koncepcja „odrodzenia ducha-budowy wolności”*, [in:] B. Krauz-Mozer, P. Borowiec (eds), op. cit., pp. 89 ff.

<sup>17</sup> More about the authors and the Round Table Agreement: A. Garlicki, *Rycerze okrągłego stołu*, Warszawa 2004. The Round Table Agreement and the parliamentary elections of 4 June 1989 essentially led to a break in the monopoly of the Communist Party in the exercising of power, introduced the freedom of association and freedom of speech and the media, initiated economic reform (in this matter, however, they lacked constructive systemic solutions) and administrative decentralization.

on the project of the “second circulation of civil society” (aka the “crippled civil society”). According to sociologists Mirosława Marody and Jacek Raciborski, it brought it harm by precluding the crystallization of a mature “open society”<sup>18</sup> — a society whereby relations and social phenomena would be governed by the autonomous law in terms of political conditions. The above thesis was accurately completed by sociologist Witold Morawski showing that the systemic change in Poland began with top-down institutional forms of influencing the society and treating it instrumentally.<sup>19</sup> It is also worth noting that the solidarity-opposition side, identifying itself before with the idea of “antipoliticality,” agreed to accept the legitimacy of political power from the hands of the former authority when signing joint agreements with the Government of the People’s Republic. At the same time — as stated by K. Murawski — they “legitimized the political role of the post-communist circles during the periods of transition.”<sup>20</sup> The opposition group changed from the symbol of national resistance into a political organization realizing its own strategy of action; in time, it got embroiled in the so-called “war at the top.”<sup>21</sup> From that moment on, the popularized concept of civil society was

<sup>18</sup> M. Marody, *Od społeczeństwa drugiego obiegu do społeczeństwa obywatelskiego*, “Studia Socjologiczne” 4, 1999; E. Górski, op. cit., pp. 74–75; J. Raciborski, *Obywatelstwo w perspektywie socjologicznej*, Warszawa 2011, pp. 153–154. As supporting evidence for the above assertions, J. Raciborski recalls the fact that, during twenty years of democracy, the social attitude important from the point of view of the analyzed concept and expressing the sense of citizens’ participation in the political life, including elections, did not become popular. In that period, the interest in politics in Poland oscillates more or less at a constant level of between 40 and 50%, with a significant commitment declared only by 15% of citizens. The study also shows that only 30% of eligible voters participate permanently in parliamentary elections. *Ibid.*, p. 122.

<sup>19</sup> W. Morawski, op. cit., pp. 219–220. J. Staniszkis in *Samoograniczająca się rewolucja*, Gdańsk 2010, is also critical of the concept of society proposed at that time — one characterized by internal uniformity and political independence. The author considered this project utopian and therefore doomed to fail.

<sup>20</sup> K. Murawski, op. cit., p. 60.

<sup>21</sup> The symbolical start of this process is associated with the appearance of L. Wałęsa as President of the Solidarity Trade Union on 11 May 1990 at a mass meeting in the mechanical plants in Puck, which initiated the internal conflict and disintegration in the anti-communist opposition centered around Solidarity. Its reasons should be sought in the dispute between Prime Minister Tadeusz Mazowiecki and L. Wałęsa, as well as in the split (against the background of KO leadership entrusted by Wałęsa to Zdzisław Najder in February 1990) in the Citizen’s Parliamentary Club “Okap” led by Bronisław Gieremek. “Okap” was formed after the electoral victory in June 1989 as a parliamentary social platform bringing together the anti-communist opposition. Some of the members of the OKP, referred to as the secular left, opted for building a broad and even non-party (without division into right and left) socio-political front, following the above-mentioned controversial idea of over-political national unity; it did not meet with an enthusiastic support of the active members of the movement, who were not member of Mazowiecki’s government. Its opponents, led by Jarosław and Lech Kaczyński, favored Wałęsa’s presidential aspirations and advocated the need to speed up political reforms. The dispute was so spectacular that it eventually led to the creation of three new parties: 1. the Center Agreement [Porozumienie Centrum] (May 1990, led by the Kaczyński brothers) bringing together supporters both of the free market (the Gdańsk group) and of government



not enriched with new elements. Only in the amended constitution did the term “civil” begin to displace the term “socialist.” Therefore, the aforementioned Polish and foreign commentators<sup>22</sup> of the so-called transformation process in Poland, harmoniously conclude that the idea of civil society, seen as an end in itself, showed significant deficiencies in assigning the proper meaning to that term. Guidelines regarding the privacy of individuals, the economy, and political pluralism were omitted; attention was paid mainly to the aspect of recovering bonds and social solidarity. This tendency made it impossible to present a constructive strategy of taking control over the state, as well as of building a participatory democracy. Moreover, because of the tendency to treat civil society in the spirit of Hegelian tradition, it began to be identified with the exclusivist concept of the “republic of friends” (by analogy to the well-known model in the works of E. Abramowski). This theory acknowledged different forms of civil society organization as its manifestations, mainly “on a micro scale, horizontal ties, [...] as alternative or ecological movements, taking away the right to the publicness of economic and political actions connected with exercising public authority, if those actions do not have the authorization of one narrow group — their own.”<sup>23</sup> This attitude encouraged the formation of customer agreements related to access to power (which was visible in the “war at the top”) and weakened the legitimacy of political power which was considered a foreign and alien part of the influential circles. This process was accompanied by a definitive denial of a solidary civil society (one mobilizing the society to involvement and responsibility in the decisions of its common fate) in favor of a mass oligarchic society, clearly differentiated into the narrow, influential, and wealthy enfranchised group (i.e. the “old”

intervention (PSL(M) and PChD), was disbanded. In the same year in place of CA a new party was created by the Kaczyński brothers, called Law and Justice [Prawo i Sprawiedliwość]; the Civil Movement for Democratic Action ROAD [Ruch Obywatelski Akcja Demokratyczna ROAD] (July 1990), of liberal socio-democratic orientation, led by well-known leaders of the Solidarity movement — Władysław Frasyniuk and Zbigniew Bujak, which would later become the Democratic Union 1990–1994, and then together with the Liberal-Democratic Congress create the Freedom Union (1994), transformed in 2005 into the Democratic Party, remaining in opposition to PC and Wałęsa; 3. Democratic Right Forum on the initiative of Alexander Hall (who supported Mazowiecki’s candidacy in the presidential election) of center-right and moderately conservative program; the local civic committees were dominated by Wałęsa’s supporters; <http://kalendarium.polska.pl/wydarzenia/article.htm?id=224855> (accessed on 22 February 2012). A rich source of information and analysis of political life in the period after 1989 is the book by A. Dudek, *Pierwsza lata III Rzeczypospolitej 1989–2001*, Warszawa 2002, pp. 116 ff.

<sup>22</sup> This opinion is shared, among others, by: J. Forbring, *Spoleczeństwo obywatelskie w dyskursie opozycji demokratycznej w Europie Środkowej*, [in:] B. Krauz-Mozer, P. Borowiec (eds), op. cit., pp. 33–55; M. Buchowski, *The shifting meanings of civil and civic society in Poland*, [in:] Ch. Hann, E. Dunn (eds), *Civil Society: Challenging Western Models*, London 1996; C. Offe, *Capitalism by Democratic Design? Democratic Theory Facing the Triple Transition in East Central Europe*, “Social Research” 58, 1991, no. 4, probably aptly describes this underdeveloped project of civil society as “a revolution without a revolutionary theory.”

<sup>23</sup> K. Murawski, op. cit., p. 67.

and “new” nomenclature) and the remaining majority with limited possibilities of social and economic advancement.<sup>24</sup> More and more pronounced tendencies could be observed — the ones towards the separation of civil society from public life, which was monopolized by the newly formed political parties, dominated in turn by the particular interests of politicians. The idea of civil society created at that time (gradually reduced to the function of an independent sector outside the state) was more and more often defined in newfangled language. It was, and still is, defined as the so-called third sector, whereby the private status of the entities is connected to the public nature of their operation.<sup>25</sup> Its threats and limitations were perceived in the tendencies toward its subordination to particular political interests at the central and regional level (using the “social void”), but also in the legal obstacles (regulations on foundations, associations, their business activities and other forms of financing), a low level of citizens’ culture (individuals convinced of the lack of influence on their fate and on the society), economic poverty (unemployment, exclusion, marginalization, and social degradation). Observation of social behavior proved that strengthening the social capital, which is the core of the above analyzed view of civil society, requires (above all in the sphere of consciousness) a long process of shaping pro-social attitudes (unfortunately, still negatively associated with socialist provenance) and building adequate and stable institutions on their basis, so as to fill the aforementioned social void.<sup>26</sup> The

<sup>24</sup> W. Morawski, op. cit., pp. 226–227 and *ibid.*, pp. 22–23.

<sup>25</sup> See K. Łokucijewski, *Spółeczeństwo obywatelskie*, [in:] A. Szmyt (ed.), *Leksykon prawa konstytucyjnego. 100 podstawowych pojęć*, Warszawa 2010, p. 553.

<sup>26</sup> According to a study by the European Social Survey, conducted in 2002 in 21 countries, civic activity measured by declared participation and membership in organizations in Poland was 24.8% (by comparison, in the Czech Republic it was 50.1%, in Hungary 33%, and in Sweden 91.8%). It increased in Poland in the first half of the 1990s (about 28%), then declined and rose again after 2000. This low level of social engagement is explained not only by the habits of the previous regime — helplessness, a demanding, paternalistic attitude towards the state, but also by the aversion to social assistance, self-help and charity, considering this sphere to be the duty of the state. Although the state itself withdraws from many areas of activity, society does not really show interest in its “development” (among the initiators of local activities, a large percentage is constituted by priests and teachers). Poles have a high degree of mistrust towards others (81% vs. 72–72% among Czechs and Hungarians, while in the Nordic countries it is less than 30%), which in the opinion of the cited authors can even be a sign of the Poles adopting an anti-civic attitude. This data shows that the non-governmental sector did not become fully established in the minds of the Poles, although some of the public sees the essence of its message, which should be perpetuated. Indeed, as evidenced by sociologists, the number of civic organizations and people interested in helping others is not expected to increase dramatically. For more see J. Dzwonczyk, *Rozwój społeczeństwa obywatelskiego w Polsce po 1989 roku*, [in:] B. Krauz-Mozer, P. Borowiec (eds), op. cit., pp. 161–181; P. Borowiec, *Główne przeszkody w realizacji idei społeczeństwa obywatelskiego*, [in:] B. Krauz-Mozer, P. Borowiec (eds), op. cit., pp. 145–160; see similar opinions in P. Gliński, *O pewnych aspektach obywatelskości. Aktywność społeczna a integracja wspólnot obywatelskich*, [in:] H. Domański, A. Ostrowska, A. Rychard (eds), *Jak żyją Polacy*, Warszawa 2000, pp. 363–393; J. Kurczewska, *Spółeczności lokalne i inteligenci: „patroni” i „partnerzy”*, [in:] H. Domański,

growing over-intensification of social activity in Poland (and even attempts at escaping from freedom) provoked by economic difficulties (strong financial differences, lack of acceptance of free market principles), but also by gradual disappearance of authority, revealed at the beginning of the 1990s (as predicted by professor J. Tischner) the predispositions and tendencies of Polish society to adopt a resigned attitude tainted by the so-called mentality of the homo sovieticus. It was, unfortunately, characterized by passiveness and rather insignificant amount of initiative and imagination.<sup>27</sup> It was seconded by the functioning model of the policy of law, which remained largely influenced by the interventionist model, in which the law — regarded as a technique controlling social development — imposes on its recipients strictly defined objectives, policies, and means to develop (the so-called targeted programs). It prevents the free evolution of social processes, whereby the public could freely decide about the choice of ends and means of their actions.<sup>28</sup> And although the danger of instrumentalization of law is frequently seen in targeted programs, we cannot disagree with the statement that in the fledgling democracy in the 1990s, targeted programs were necessary — primarily those that served the protection of individual rights, democratic institutions, the free market, and measures related to the implementation of the idea of civil society.<sup>29</sup> At the same time, however, the idea of civil society required for its full implementation a transition from an interventionist model of the policy of law, characterized by the formation of targeted programs of law by the legislator. In this model, the legislator controls the society through the law towards the neoliberal model of the policy of the law, encompassing the so-called conditional programs, where the legislator defines only the framework for social action. The law in such a concept is primarily a guarantor of order, defining the boundaries of state power, protecting the rights of the citizens, and allowing them to develop freely and independently from targeted programs, by being favorable of the evolution of an independent body, which the society might become. Meanwhile, in the approach to the vision of law at the turn of the 1980s and 90s, two concepts “clashed”: the instrumental concept and the non-instrumental concept. The first was associated with a strategy of society control through the law. The latter assumed that the law is an autonomous social institution of intrinsic cultural and moral value or claimed the law to be the expression and symbol of values, as well as characterized the law

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A. Ostrowska, A. Rychard (eds), op. cit., pp. 395–425; M. Kempny, *Jedna Polska i wiele ojcowizn. Między wspólnotą narodową a wielością wspólnot lokalnych*, [in:] H. Domański, A. Ostrowska, A. Rychard (eds), op. cit., pp. 413–425.

<sup>27</sup> J. Tischner, *Etyka solidarności i Homo sovieticus*, Kraków 1992. See also E. Górski, op. cit., 76 ff.

<sup>28</sup> For more see L. Morawski, *Spór o model polityki prawa — ujęcie systemowe*, “Państwo i Prawo” 9, 1992.

<sup>29</sup> See. L. Morawski, *Instrumentalizacja prawa (zarys problemu)*, “Państwo i Prawo” 6, 1993; see also W. Lang, *Instrumentalne pojmowanie prawa a państwo prawa*, “Państwo i Prawo” 12, 1991.

as an element of the social system, which performs specific functions in relation to the whole system or its parts.<sup>30</sup> The instrumental view of law referred to the idea of the law as a social technique associated with technological rationality, whereby the law is seen as a tool for achieving a variety of social objectives pursued by the legislator and determined as the purpose of legal regulation.<sup>31</sup> In broader terms, it assumed that the law is subject to assessment and instrumental justification in the following aspects: 1) reductionist — favoring a simple instrumental assessment (social engineering) and assuming as the base value of law its finite effectiveness and 2) in non-reductionist terms — heading towards a complex assessment of law: instrumental, teleological, axiological and prosthetic.<sup>32</sup> As can easily be seen, the reductionist version of instrumentalism could justify a minimalist version of the policy of law, taking into account the purposeful directives in the process of creation, interpretation, and application of the law and using it to shape the actions desired of the state by the citizens. As contradictory to the idea of the rule of law and the principles of formal legality, it was subjected to thorough criticism on the basis of political views on the law. Therefore, the transition period strived for a non-reductionist version of instrumentalization, limiting the scope of the instrumental use of the law. The possibility of an instrumental use of the law was given to entities creating and applying the law, as well as the addressees of the law. The non-reductionist version created limits for permissible instrumentalization of law in such a way that the entities, which used the law instrumentally, had to be part of the legal order and work within this order (not outside of it). The objectives pursued by the targets were selected and internalized by the legal order itself, as targets corresponding to the structure functions and axiology of the legal order.<sup>33</sup> It was emphasized that while every law is a form of social control when achieving certain goals, not every law is a form of society control. Control through steering can be regarded as a manifestation of the

<sup>30</sup> On the margin of these considerations it should be noted that the contemporary discussion on the instrumentalization of law gives up the ideas which are the core of the ideological reflection of the Polish political science of the 1990s, which established the negative, axiologically involved idea of the instrumentalization of the law. Currently, the issue of the instrumental nature of the law is associated with the transition from traditional legal systems to modern systems operating in industrial societies and is now understood as a characteristic attribute (an abstract categorial feature) of the law. See A. Kozak, *Instrumentalność a instrumentalizacja prawa*, [in:] idem (ed.), *Z zagadnień teorii i filozofii prawa. Instrumentalizacja prawa*, Wrocław 2000, p. 97; A. Bator, *Instrumentalizacja jako aspekt prawa*, [in:] L. Leszczyński (ed.), *Zmiany społeczne a zmiany w prawie. Aksjologia, konstytucja, integracja europejska*, Lublin 1999; idem, *Prawna czynność konwencjonalna jako działanie zinstrumentalizowane*, [in:] A. Kozak (ed.), op. cit.; also W. Lang, op. cit., p. 5.

<sup>31</sup> For a critical analysis of the concept of instrumentalization of law see. L. Morawski, *Instrumentalizacja prawa (zarys problemu)...*, pp. 17–28.

<sup>32</sup> For more on the versions of instrumental understanding of law see W. Lang, op. cit., pp. 3–13; also W. Gromski, *Autonomia i instrumentalny charakter prawa*, Wrocław 2000, chapters III and IV.

<sup>33</sup> W. Lang, op. cit., p. 6.

instrumentalization of law, when it is not acceptable from a moral point of view (the moral limits of the law). It is therefore necessary to distinguish between the forms of instrumentalization that are morally wrongful and those which are acceptable (and even necessary). L. Morawski decided that instrumentalization is “every case whereby the legal regulation limits our right to choose, particularly by defining the objectives or measures of our actions in a situation, where it is not necessary for protection of the rights and freedoms of others and done against their will, or when it takes on the form of manipulation.”<sup>34</sup> The risk of instrumentalization is associated with control through steering, when the legislator imposes goals and means of action on the addressees, at the same time entering the sphere of individual rights without their consent, endangering the idea of basic rights and freedoms, the ideas of the state of law, democracy, the idea of civil society. It is difficult to say to what extent the period of transformation and axiologically negative entanglement of the instrumentalization of law developed an autonomous (non-instrumental) way of understanding the law. The autonomy of law, in fact, combines with the display of the law as a cultural fact, with its relative independence from the political sphere. The latter is considered to be a platform for the clash of opposing interests (and influence) of different social groups, with generally formed and commonly accepted constitutional practice as the foundation of a democratic state, a formed concept of the sources of law, rules of interpretation and autonomy of the application of the law, and with the ethical attitudes of the legal profession.<sup>35</sup> At the same time, the axiological meaning of the thesis of the autonomy of the law comes down to the question of whether law is a value in itself (legality, rule of law, social order, legal certainty), or what kind of judgment the law is subject to.<sup>36</sup>

Surely, the time of political transition was the time of attempts at shaping the legal culture into the new social reality, but it was also the time of a deepening crisis of confidence in the law, juridification of social life, of growing disputes about the model of the policy of law. Therefore, in discussions about the shape of law, efforts were made to emphasize the fact that the law as an interpretative fact is part of culture in a particular society.<sup>37</sup> The depositary of law, therefore, is the whole community, formed by the officials as well as citizens.<sup>38</sup>

It should also be noted that the rarely seen enthusiasm, admittedly felt in the so-called transformation period on the part of majority of the Polish society, turned over time into passably manifested support for political (legitimizing controlled pluralism) and economic change (i.e. in the direction of state capitalism).

<sup>34</sup> L. Morawski, op. cit., p. 22.

<sup>35</sup> More on the ways of understanding the idea of autonomy of the law: W. Gromski, op. cit., chapters I and II.

<sup>36</sup> Ibid., p. 24.

<sup>37</sup> Ibid., p. 20; see Z. Pulka, *Legitymizacja państwa w prawnoustawstwie*, Wrocław 1996, p. 214.

<sup>38</sup> W. Gromski, op. cit., p. 20.

It was dictated, especially at the turn of the century, by the improvement in the material standard of life and growing sense of ties with the West. However, it resulted in the appearance (typical of the Western world of the 1970s) of a utilitarian society, in which the peculiar pattern of mass consumption, as well as the trend to care mostly for oneself and one's closest family, became widespread. It certainly favored the stabilization of the elite and pluralist political institutions, but it deepened the passivity and even political indifference of the masses.<sup>39</sup> As a consequence of the adopted, but not exactly developed, concepts of the state and of civic community and their mutual relations, a formal model of society was constructed in the Polish Constitution of 2 April 1997.<sup>40</sup> This society was treated as a sovereign in the political sense, but also as an entity authorized to organize and act in various ways on all levels of being, within the limits of the common good and legally acceptable public order. It was thought that the Republic of Poland should be understood in terms of a political organization, which is the good created by its citizens, giving them (in economic terms in accordance with the principle of "social market economy," quite generally formulated in Art. 20 of the Constitution) the possibility for enrichment and fulfillment in other areas of public life.<sup>41</sup> In the legal dimension, components of civil society — though not formulated *expressis verbis* in the provisions of the 1997 Constitution — were expressed in the postulate to organize a pluralistic society, so that each individual (on the basis of the freedom of choice) could fulfill their subjectivity as a citizen, resident, or employee in their chosen organizations and structures at national, professional, or local level.<sup>42</sup> That is the essence of a modern democracy. The evidence of this were, in particular, 1) the constitutional principle of political pluralism, ensuring the freedom of establishment and functioning of political parties, transparency of their financing, and transparency of their structure and membership (Art. 11 and *a contrario* Art. 13 of the Constitution), 2) the principle of the creation and operation of appropriate organizational structures, such as associations, societies, trade unions, socio-occupational organizations of farmers, civil movements, and foundations whose purpose is to represent individuals against the public authorities and the protection of socio-economic interests of citizens (Art. 12, 58 and 59 of the Constitution), as well as 3) the principle of decentralization of public authority,

<sup>39</sup> K. Murawski, op. cit., p. 28. See similar opinions on the consumerist attitude of Polish society in the time of the so-called transformation, in A. Kapciak, *Konsumpcja jako model doświadczenia kulturowego*, [in:] M. Marody (ed.), *Zmiana czy stagnacja? Społeczeństwo polskie po czterech latach transformacji*, Warszawa 2004, pp. 71 ff. It is also worth noting that the example of the Polish society (similarly to others of the so-called Eastern Bloc), which showed a high degree of mobilization in the transition to democracy, did not result in a long-term process of radical transformations, which was undoubtedly a sign of weakness and lack of a creative force in formatting an authentic civil society mentioned above. See E. Górski, op. cit., p. 52.

<sup>40</sup> The Constitution of the Republic of Poland, 2 April 1997, Journal of Laws No. 78, item 483.

<sup>41</sup> K. Murawski, op. cit., 68 ff.

<sup>42</sup> See L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2000, p. 66.

which is expressed in the idea of self-governing (Art. 16 of the Constitution). The meaning of these regulations comes down to building a conscious and effective participation of citizens in public life, participation in decision-making, consolidating a sense of identity, basing the citizen-state and citizen-society relationships on horizontal ties. The above-mentioned principles are a reference to the rules of social pluralism, voluntary creation, and operation of various types of social organizations and associations. These principles are not absolute, since their implementation is determined by bringing forward the idea of a democratic rule of law.<sup>43</sup> Freedom of association (an emanation of which are, among others, the creation and operation of political parties, the creation of organized forms influencing state policy, the idea of self-government) is, according to the doctrine, a constitutionally indispensable element of a liberal, democratic legal order.<sup>44</sup> The Constitutional Tribunal in the judgement of 8 March 2000<sup>45</sup> emphasized that a political party is a form of realizing the freedom of association, and, in particular, of realizing the aspiration for the pursuit of organized cooperation in the exercise of power; on the other hand, however, through its ability to influence the policy of the state, it is part of the political system. The association of citizens in political parties is, therefore, a realization of their fundamental right to influence state policy. While referring to the very principle of freedom of association, the Tribunal held that it determines the possibility of the functioning of civil society through the creation of formal organizational ties with the objectives and tasks not regulated by the state.<sup>46</sup> Also, the Supreme Court in its decision of 15 June 1993 states that freedom of association is a civic constitutional law in a rule of law state, and is one of the foundations of the democratic system; its seamless implementation serves the common good.<sup>47</sup>

What requires special emphasis is that the idea of civil society, formulated in political, social, and legal discourse, found its normative dimension already in the content of the so-called December Act of 29 December 1989, which amended the Constitution of the People's Republic of Poland.<sup>48</sup> Article 85 states that:

<sup>43</sup> On the conditions of implementing freedom of association, the creation of political parties, local governments, and statutory conditions for their limitations, see. J. Oniszczyk, *Konstytucja Rzeczypospolitej Polskiej w orzecznictwie Trybunału Konstytucyjnego na początku XXI wieku*, Kraków 2004, pp. 670–674.

<sup>44</sup> J. Oniszczyk, *op. cit.*, p. 668.

<sup>45</sup> Constitutional Tribunal's judgement of March 8, 2000, Pp. 1/99, OTK 2000/2/58. Both this judgement and the one mentioned below go beyond the time frame chosen by the text's authors (1989–1997); however, given the importance of the judgements, the authors decided to include them in the text.

<sup>46</sup> Constitutional Tribunal's judgement of January 12, 2000, P 11/98, OTK 2000/1/3.

<sup>47</sup> Supreme Court's decision of June 15, 1993, I PRN 54/93, OSA 1994/11–12/8. This decision was made against the background of the preamble to the Act of 7 April 1989, the Law on Associations, Journal of Laws 2001, No. 79, item 855 as amended.

<sup>48</sup> The Act of 29 December 1989 amending the Constitution of the People's Republic of Poland, Journal of Laws 1989, No. 75, item 444.

Trade unions shall play an important public function in the Republic of Poland as mass organizations which take part in the formulation and implementation of tasks of social and economic advancement of the country; the trade unions shall represent the interests and rights of working people, and shall be a school of civic activity and involvement in the creation of civic society.

Freedom to form trade unions as democratic structures is certainly both a political and social value, which was, as a result of political changes, accepted by the rational legislator. And the formulation of Art. 85 *in fine*, which dealt with the development of civil society, determined the respect of the political elite for the importance of the complex processes of change, the change of the legislator's axiological attitude, and the reference to the European tradition of legal culture. In the jurisdiction of the Constitutional Court at the turn of the 1980s and 90s we also find a reference to the idea of civil society (and the idea of a democratic society or social pluralism, treated as synonyms) as the idea fulfilling an important role in the development of political and social organizations, as well as being the manifestation of "democratic changes."<sup>49</sup> The existence of civil society is the basis for forming social and political activity of citizens; it is the protection of their diverse socio-economic interests and the possibility for the development of entrepreneurship. The jurisdiction of the Constitutional Court of the 1990s was familiar with the postulate for favorable interpretation of law in cases of doubt; it was to serve the creation of civil society in the period of transition.<sup>50</sup>

Until then this statutory paradigm did not favor the formation of fully conscious civil society that would be responsible for the common and individual good and which would conform to the ideals pursued by the authors and interpreters of the Constitution. It is hoped that stimulating external factors or creative centrifugal forces will appear and initiate the creation of a bottom-up, authentic civil society; this is to be a society specific for the Polish people (especially in the political context), one conscious of the existence of civic culture expressed through the approval of the accepted hierarchy of ethical values, attitudes and patterns of behavior considered a priority for the duration and the development of society.<sup>51</sup> Here, it is worth referring to the balanced views of an eminent Polish thinker, a person of outstanding merit in the field of science of morality, Maria Ossowska (1896–1974), whose guidance might be valuable in the formation of civic attitudes by the Polish society and its elite. In her opinion, the perfect democrat — a citizen — is characterized mostly by: perfection in the improvement of personal and social life, openness of mind, inner discipline, tolerance of others' opinions, activity towards the improvement of reality, civil courage in defending his own opinion, intellectual honesty combined with criticism, responsibility for the views he voices, and finally — the social attitude determined by attentiveness to social

<sup>49</sup> See Constitutional Tribunal's judgement of January 9, 1996, K 18/95, OTK 1996/1/1; judgement of November 21, 1995, K 12/95, OTK 1995/3/15.

<sup>50</sup> See Constitutional Tribunal's judgement of November 19, 1996, K 7/95, OTK 1996/6/49.

<sup>51</sup> A. Musiał, *Dylematy społeczeństwa obywatelskiego*, <http://www.racjonalista.pl/kk.php>.



problems, by overcoming self-centeredness, and by generous service to the society, the ability to cooperate, and even aesthetic sensibility and sense of humor.<sup>52</sup> This catalogue of civic dispositions (drawn up by the author still during the reign of the former regime), seems to be maintained; it should be dedicated not only to today's citizens, but also to their moral authorities and political elites, for them to make a joint effort to build a civil society of the 21st century.

CIVIL SOCIETY IN POLAND IN THE 1990s.  
IDEAS AND THEIR REFLECTION IN THE CONSTITUTION AND IN JURISPRUDENCE

Summary

Civil society is the term being in the interest of many branches of science. Through centuries in different legal and social systems the above-mentioned term has been named as: *koinōnia politike*, *societas civilis*, *civil society* or *bürgerliche Gesellschaft*. The idea of civil society was and still is a basic condition for the democracy model and for the organization of community life in contemporary societies.

In many modern perspectives on the civil society there is a common denominator unrelated to the legal capacity of the state. From that background the crucial question to be posed is about the place of an individual in the functioning of civil society and it should be related to communitarian and liberal conceptions of an individual which takes part in an ontological foundation of society. According to the normative analysis, the idea of the civil society is present in the legal systems of democratic states including developing democracies of the Central and Eastern Europe.

The subject matter theory finds that the idea of civil society entirely gains in value only when related to the principle of subsidiarity. It assumes primacy, independence and autonomy of an individual in meeting his needs before the needs of social communities, especially before the needs of the state as the "highest being." Thus in an active democracy a great importance is placed on the development of the so-called third sector, right to associate, non-discrimination, political pluralism, functioning of associations supporting activities of an individual in the public space.

**Keywords:** democracy, civil society, the third sector, post-communism regimes, constitution, judicature.

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<sup>52</sup> M. Ossowska, *Wzór demokracji. Cnoty i wartości*, Lublin 1992, pp. 15–37.