

Procedures and limits of amending the 1997 Constitution of the Republic of Poland

Amending the constitution is the central and basic issue for the doctrine of constitutional law, of particular theoretical, practical and symbolic significance. The amendment to the constitution is often seen as the most important decision that a nation or its representatives can make in a democratic state, especially if it is understood as a comprehensive amendment or enacting a new constitution. Even if in a daily constitutional practice this issue is often not visible, it maintains its multidirectional potential, both of transformational and stabilizing nature, and in specific situations, particularly critical situations, it can be of a deciding significance. First of all this is due to the special content, legal force and amendment procedures of the constitution as well as to the importance of the correlation between the rules of constitutional amendments and durability of the system of government that the constitution determines and in which it functions. The amendment to the constitution is also a crucial issue for constitutional law, in the sense that the regulations regarding the constitutional amendment form and reflect various principles and mechanisms that are of a decisive relevance for the political community, related to the hierarchy of the sources of law, organization of state bodies and their mutual relationships or the scope of the power of the majority and rights of the minorities.

Finally, the issue of constitutional amendments, but also of the review of those amendments, gains in importance in the countries ruled by the politicians calling for the change of the established constitutional order. The constitutional transformations that we are witnessing in Poland and the perspectives of their continuation or reversal cause the research on the limits of constitutional amendments take on an unusually up-to-date character. The issues of the procedures, limits and constitutionality review of the Polish Constitution is therefore relevant and topical in both universal and local (Polish) perspective, in both cases touching upon the very foundations of the present debates on the state and the law.

The main objective of the project is to propose solutions to contentious issues and to fill the gaps in the studies on the procedures, limits, and constitutionality review of amending the 1997 Constitution of the Republic of Poland – and, based on those results, to comprehensively characterize these issues. The aim of the detailed studies is:

1. within the framework of the first (“formal”) part:
 - a. to propose solutions to contentious issues and to fill the gaps in the studies on the procedures of amending the Constitution;
 - b. to propose solutions to contentious issues and to fill the gaps in the studies in that matter based on the assumption, arising from the results of the preliminary studies, that the formal constitutionality review of amending the Constitution is at least partly admissible;
 - c. to comprehensively characterize the issues of the procedures of amending the Constitution, involving the issue of formal constitutionality review of its amendments based on the results in the above scope;
2. within the framework of the second (“material”) part:
 - a. to propose solutions to the key contentious issues and to fill the gaps in the studies in this matter, including specifying the criteria of setting those limits as well as setting those limits based on the assumption, arising from the results of the preliminary studies, that there are limits of amending the Constitution;
 - b. to answer the question whether the material constitutionality review of amending the Constitution is admissible; in case the answer is positive – to setting the criteria and the scope of such a review;
 - c. to comprehensively characterize the issues of the limits of amending the Constitution, also including the issue of the material constitutionality review of its amendments based on the results in the above scope.