

# Poland

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## Introduction

The principle of “solidarity” is vivid yet quite ambivalent among Polish people due to complicated socio-cultural antecedents. Even though “solidarity” as a value is very often discussed in public debates, its meaning is not very clear and depends on the discussant’s intention. The “Solidarity trade union movement, which has dominated the discourse on “solidarity” for years, has exerted a strong influence on the people, while neoliberal policies implemented after 1989 have digressed far from this principle. The new Polish Constitution was introduced in 1997, later than in other countries of the region, when social enthusiasm after the fall of the communist system was less robust. The principle of “solidarity” appears in the Constitution only once (on its own, not in relation to other principles), in the preamble, but not of a legally binding character. It is less often evoked by the Constitutional Court than other values (Stefaniuk 2003/2004). Thus, the meaning of “solidarity” in Poland is strongly anchored in specific socio-cultural background and the legacy of the “Solidarity” movement during communist times. The Constitution of the Republic of Poland (Konstytucja Rzeczypospolitej Polskiej), 2 April 1997, defines the political system in Poland. According to Art. 2 of the Constitution, Poland is a democratic state ruled by law, implementing the principles of social justice.

Polish constitutionalists (Winczorek 2000; Sokolewicz 1998; Jędrzejowska 2011) enumerate more than twenty basic principles of the Polish Constitution, among which are “democracy based on the rule of law”, “social justice” (Art. 2) and “common good”, as Art. 1 states “*The Republic of Poland shall be the common good for all its citizens*”. The other values explicitly indicated in the Polish Constitution are “freedom and human rights” (Art. 5), political pluralism (Art. 11 and Art. 13) and “social pluralism and civil society” (Art. 12) as well as “decentralisation of public power”, “self-governing” (Art. 15-17) and “subsidiarity” (in the Preamble). Art. 32 in Chapter II of the Polish Constitution states that “*All per-*

sons shall be equal before the law. All persons shall have the right to equal treatment by public authorities”, a strong emphasis on constitutional value of equality.

The relatively late arrival of the Polish Constitution caused a general lack of interest surrounding basic law, and now this act is often questioned. In May 2017, President Andrzej Duda announced that he wanted a national debate on Poland’s Constitution. He wanted to change Poland’s Constitution and called for a referendum on it. Therefore, the future of the Polish Constitution and embeddedness of different values, including “solidarity”, is uncertain.

### *Cultural Context: Remarks on “Solidarity” in the Polish Public Discourse*

Poland is a country in which “solidarity” is primarily associated with the “Solidarity” social movement which had a substantial influence on political change and democratisation. Thus, “solidarity” as a value cannot be interpreted without acknowledging the importance of the trade unions and the social movement which had a strong impact on the transformation of the political system in 1989. During manifestation of the “Solidarity” trade union at the beginning of 1980, “there is no freedom without solidarity” (*nie ma wolności bez solidarności*) was often heard. The stance of “Solidarity” was supported by the Catholic Church, which was also a very important actor of the anti-Communist opposition. In particular, Pope John Paul II significantly contributed to the existence of “solidarity” in public discourse, saying: “there is no freedom without solidarity” in his speech during his pilgrimage to Poland in 1987. Given the political context, this was a clear reference to the solidarity action against the regime in general and to the labour union’s “*Solidarność*”. The pope paraphrased his words on “solidarity” during his latter pilgrimages to Poland. This narrative created some links in Poland between “solidarity” and the Catholic Church pedagogy. Kubik states that: “Every analysis of the phenomenon of Solidarity which does not include the role of Polish Catholicism and the Polish Pope is highly incomplete” (Kubik 1994). What seems particularly important in this context is the influence of Catholic social teaching on the official programme of “Solidarity” (Brzechczyn 2011).

Although “Solidarity” as a movement and as a value were very important during the fall of the communist regime, the subsequent transformation period is often perceived as the “defeat” of “Solidarity”. The move-

ment failed to independently create a self-governing republic in 1989, and its defeat was even harder in 2001. Economic and political order in Poland started to differ significantly from what the opposition to the communist era had hoped (Shields 2003). There are different explanations for this discrepancy. One of them points to the role of the debate which was initiated in Poland by economists from the liberal school in the late 70s and that had continued to develop. It emphasised that the system was bankrupt and needed deep, massive changes toward a market-driven, entrepreneurial economy. This narrative strongly shaped a liberal intellectual climate in Poland (Walicki 1988). Moreover, many academics, including a group of persons later involved in politics, obtained grants to Western universities, influenced by neoliberal ideology (Zubek 1997). Thus, the country of “solidarity” implemented so-called “shock therapy” involving the fundamental role of individual freedom as well as in the fields of social policy and economics. Poland has become a state implementing neoliberalism, which could be defined as an ideology that prefers market-based solutions to almost all social phenomena (Duménil and Lévy 2005). In international comparisons, the Polish model of social policy is often classified as minimalist, liberal or hybrid, with certain privileged groups in the labour market. Social and labour market policies after the transformation in 1989 did not always reflect the declared ideological affiliations of the political parties. Neoliberal changes were introduced during social democratic governments as well as Christian democratic ones (Szelewa 2014; Cerami 2008). Moreover, according to some scholars, the EU has exported a more “market-radical” variant of neoliberalism to its new member states (Bohle 2006), so that the Polish model may be called “flexi-insecurity” (Meardi 2012).

Although the Catholic Church remains important in the public sphere, the impact of neoliberalism in Poland has not been its central theme. Societal values, especially concerning family life and sexual ethics, have become a core interest of the Catholic Church in Poland, its teaching and societal position (Haynes 2009). The level of declared religiosity continues to be stable in the last few decades. According to the last census in 2011, 87.58% of people declared themselves as Catholics (GUS 2013). Nevertheless, the knowledge of the social teachings of the church is not much in evidence in Polish society with three-quarters of Catholics declaring that they have never read papal encyclical (CBOS 2010). It is not surprising that declarations of Poles often diverge from the principles of the social doctrine of the Church. For example, when asked about attitudes to immi-

gration, only about 30% of the Polish public think that it could make a positive difference to the economy; a similar proportion feels that it could enrich the cultural life of the country. Poland is the most nationally homogenous country in the European Union and the majority of the Polish public do not see immigration as a positive influence. In turn, when asked about a series of different groups as potential neighbours, half of the Polish public would rather not have people with a criminal record and Roma (about 55%), or Muslims and left-wing extremists, e.g., communists (50%). A large number of people would not like to live next door to homosexuals (40%) followed by people with AIDS (33.5%), immigrants (20%) or Jews (19%). This contributes to the picture of a relatively intolerant Polish public (LIVEWHAT 2016). Another study shows that Poland, together with Lithuania, Venezuela, Bulgaria and Estonia, has the lowest level of empathy among 63 countries. The study measured the locals' compassion for others and their tendency to imagine another person's point of view (Chopik, O'Brien and Konrath 2016).

Nevertheless, the notion of "solidarity" is present in public discourse. It has been used by politicians over subsequent decades, usually to contrast the standpoint of somewhat traditional, catholic and poorer parts of Polish society with the richer more liberal and allegedly success-oriented citizens. For example, in 2005, the parliamentary election campaign was focused on a slogan formulated by a right-wing political party, the Law and Justice party. The slogan came to define the discursive disagreement of "solidarity Poland" versus "liberal Poland". In his expose in 2007, Prime Minister Donald Tusk was explicit, stating:

*We have been talking about the false alternative (...) in which freedom is contrasted with solidarity (...) in 1980 our dream came true — the dream of freedom and solidarity back in one house (...) this government and this coalition is for the sake of freedom and solidarity, in the future no one dares to contradict freedom and solidarity (...).*

This discursive opposition has, however, been used during the ensuing years. On the one hand, it has brought to the debate the question of state functionality and its role towards the most vulnerable groups. On the other hand, the notion of "solidarity has been used in a populist way — to disregard ruling party policies as allegedly promoting elitist interests.

At present, it seems that the principle of "solidarity may be under threat. On one hand, since the Law and Justice party (*Prawo i Sprawiedliwość, PiS*) won the parliamentary election in 2015, the new government has implemented the values of solidarity (i.e., by introducing generous

family benefits and lowering the retirement age). On the other hand, bearing in mind that the principle of “solidarity” is not directly entrenched in the Polish Constitution, the constitutional crisis related to the functioning of the Constitutional Court, which should be an independent constitutional organ of the state, may constitute a real threat to this (and other important) principle(s). Poland has been going through this crisis since 2015. The Constitutional Court’s main task is to supervise the compliance of statutory law with the Constitution of the Republic of Poland and international agreements. It adjudicates on disputes over the powers of central constitutional bodies and on compliance with the Constitution of the aims and activities of political parties. It also resolves constitutional complaints. But after winning the election, the new president of Poland refused to swear into office the judges appointed to the Constitutional Court by the previous parliament. In December 2015, the newly elected parliament appointed five new judges to the Constitutional Court. Parliament did not wait for the Tribunal’s ruling on whether the initially appointed judges had been appointed based on law in compliance with the Polish Constitution. The rule was that election by the previous parliament of all five judges at once was partially unconstitutional (it allowed for the appointment of three judges whose tenures expired in November 2015).<sup>1</sup> This judgement of the Constitutional Court was not published by the Prime Minister (who is obliged to publish it immediately) until after two weeks, because the Chief of the Chancellery of the Prime Minister sent a letter to the President of the Constitutional Court in which she noted that the judgement was invalid. Furthermore, in reaction to the judgement, at the end of 2015, Parliament adopted the new Act on the Constitutional Court, which might in fact block the work of this court. On 9 March 2016, the Court delivered its judgement in which it pronounced the Act amending the Act on the Constitutional Court as unconstitutional.<sup>2</sup>

The representatives of the government did not accept this judgement, which was not published. The Act on the Constitutional Court of 2015 lost its binding force with the entry into force of the new Act on the Constitutional Court of July 2016. The Constitutional Court found its provisions unconstitutional, but this judgement of the Constitutional Court of 11 August 2016 also has not been published (Szuleka, Wolny and Szwed 2016).

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1 Judgement of the Constitutional Tribunal of 3 December 2015, K 34/15.

2 Judgement of the Constitutional Tribunal of 9 March 2016, K 47/15.

The Constitutional Court crisis provoked controversy in Poland and abroad and may be seen as a threat to the realisation of constitutional principles — including the “solidarity principle.”

In conclusion, “solidarity” has always been a relevant principle in Polish discourse, especially during times of political transition, due to the importance of the trade union movement as well as the Catholic Church’s influence. However, after 1989, the dominance of neoliberal policies, with less Church focus on social teachings, and growing political divisions in the country have resulted in the emergence of an opaque definition of solidarity. Moreover, the fact that this principle is not entrenched in the Polish Constitution (to be developed in the next part of this chapter) may be problematic for its interpretation. In this context, the threat of the Constitutional Court, as a separate power, is a great menace to this principle in the future.

### *The Constitutional Entrenchment of “Solidarity”*

The Constitution of the Republic of Poland of 2 April 1997<sup>3</sup> in its main text does not refer to the “solidarity principle explicitly. Thus, the literature on “solidarity” in the Polish Constitution (Pułło 2015; Piechowiak 2012) is scarce. However, “solidarity” is mentioned in the Preamble, which means that it should be considered as one of the first in the hierarchy of constitutional principles of Poland. In the Preamble, “obligation of solidarity” is considered as one of the three universal values, next to “inherent dignity of the person” and “right to freedom”.

*We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland.*

In the Constitution, “solidarity is a universal value and should be respected both by the authorities and citizens. But it remains very general and for this reason it is considered rather as an interpretative directive rather than as an intrinsic principle of law (Pułło 2015).

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3 The English version is available here: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

Indirectly, this rule may be inferred from other principles laid down in the main text of the Constitution. “Solidarity is mentioned in Art. 20 as one of the elements characterising the social market economy:

The social market economy is the basis of the economic system of Poland which is based on freedom of economic activity, private ownership, solidarity dialogue and cooperation between social partners.

But “solidarity in Art. 20 of the Constitution is understood in a narrower sense, in particular as far as it addresses these principles, which are: social partners (i.e., trade unions), employers’ organisations and the authorities of the state when the state is also the employer.

The Constitution was adopted by the Polish National Assembly on 2 April 1997, by a vote of 451 to 40. It was late compared to constitutions adopted in the other Central and Eastern European countries: Bulgaria, Romania and Slovenia in 1991 and the Czech Republic and Slovakia in 1992. The constitution making process was drawn out, and belated adoption ended in a general lack of interest surrounding basic law. It was approved in the referendum, but with a low turnout only 42.9% of eligible voters participated in voting (Flanz and Blaunstein 1997). Probably it would have received speedier societal approbation and would have been met with more enthusiasm had it been adopted in 1989 or 1990 (Cholewiński 1998). But the significance of Catholic social teaching was still strong and influenced the authors of the Constitution.

Thus, the “value” of “solidarity even if not directly expressed, remains important in Polish basic law and could be understood better through this perspective (Pułło 2015). In the Catholic social teaching the principle of “solidarity” is generally considered as one of the three basic social and ethical values. The notion of “solidarity” is compatible with common commitment, common action and mutual support. The principle of “solidarity” as stated in Catholic social teaching and the Preamble of the Polish Constitution indicates that people who cannot help themselves should not be left alone and that people should support each other to lead a dignified life (Pułło 2015). In this context, “solidarity” could not exist without “responsibility” for others. It should be noted that in the Polish Preamble, there is an “obligation of solidarity with others”. And as it is stated in the encyclical *Sollicitudo rei socialis* promulgated by Pope John Paul II on 30 December 1987, “solidarity” should be understood as:

*... a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all.*

However, this constitutional “obligation of solidarity from the Preamble remains a civic obligation of individuals. It does not guarantee a right to claim the “solidarity” of others through law and the state. Thus, in the next sections of this chapter, we will present values that are related to “solidarity” and its understanding, even if that “solidarity” is not directly mentioned, or if it is only evoked in interpretation of the courts or scholars.

### *Solidarity and the Common Good*

“Common good” is a principle expressed in the first article of the Polish Constitution: *“The Republic of Poland shall be the common good of all its citizens”*.

As constitutionalists state, it is a value largely unspecified unless contextualised (Jędrzejowska 2011). In some interpretations the principle of “common good” means mutual obligations of the citizen and the state (Piechowiak 2012); an obligation of the citizen to show concern for the state (understood as “common good”) and the state to show concern for the citizen. The citizens’ obligations toward the state are confirmed in Art. 82 of the Constitution *“Loyalty to the Republic of Poland, as well as concern for the common good, shall be the duty of every Polish citizen”*.

The aforementioned mutuality requires a shared responsibility and cooperation of all, including public institutions for the “common good”. Any value to be acknowledged as a “common good” must be socially acceptable (Gołębiowska 2015). Therefore, as Gołębiowska states, in order to enable all citizens to properly contribute to the development of the “common good”, the state and its agents must ensure respect for the dignity of each person and realisation of other principles, such as: equality, social justice and solidarity. There is no “common good” without “solidarity”. A state is an association based on “solidarity” and mutual dependence (Gołębiowska 2015).

The Polish Constitutional Court finds “common good” synonymous with public interest (of all people) (Complak 2007). In its judgements, the Constitutional Court often refers to the “common good” when it wants to limit some individual rights or to choose between common good and particular interest of some groups. These principles are the basis for the obli-



gation of the legislature in the field of social policy to give priority to “common good” over individual good and before any other particular good. In this context, common good is connected to Art. 20 addressing the social market economy and obligation of “solidarity” in the cooperation and coexistence of social partners.<sup>4</sup>

### *Solidarity and Social Justice*

“Solidarity” can also be extracted as an essential element of the principle of social justice, which can be found in Art. 2 of the Polish Constitution, which states that *“The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice”*.

As the Constitutional Court in Poland explains in its judgements, constitutional values are derived from the social philosophy known as *social solidarity*. The Court emphasises that the principle of social “solidarity” requires that the burden of an economic crisis shall be imposed on all social groups and that “solidarity” is the source of a redistributive function of social justice<sup>5</sup>. Complementary to that, during economic prosperity, all social groups should benefit.

According to the judgements of the Constitutional Court, the concept of social justice is associated with other constitutional principles like *“equality before law, social solidarity, minimum social security and providing basic living conditions for people who are out of work”*<sup>6</sup>.

The principle of social justice applies — on the one hand — to social relations between different social groups, and — on the other hand — to relations between these social groups and the state. According to the opinion of the Constitutional Court, the principle of “solidarity” as an element of social justice reflects the balance in social relations. It also helps to avoid the creation of unwarranted criteria privileges for certain groups of citizens based on nonobjective requirements”, and criteria privileges for certain groups of citizens<sup>7</sup>.

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4 Judgement of the Constitutional Tribunal SK 11/98, K 17/00, K 47/00 and SK 23/01.

5 Judgement of the Constitutional Tribunal, P 11/12.

6 Judgement of the Constitutional Tribunal of 23 Jun 2013, P 11/12.

7 Judgement of the Constitutional Tribunal of 14 April 2000, K 8/98.

The principle of social justice in the context of “solidarity” was the basis of various rulings of the Constitutional Court. For instance, in the judgement (P 11/12) of 25 June 2013, the Court decided that the requirement of an actual stay in the territory of Poland as a necessary condition for entitlement to a social pension (*renta socjalna*) is incompatible with the Polish Constitution. The social pension is funded from a public budget and granted to adults who have been recognised as totally unable to work due to impairment of bodily functions which occurred before reaching the age of 18 years, or during the course of studies at school or any higher education institution before reaching the age of 25 years, or during the course of doctoral studies or post-graduate programmes. According to the Court, the right to a social pension is the expression of the principle of social “solidarity”, which is not derived directly from the Constitution, but from “social solidarity philosophy” to which the Constitutional Court often refers (Lach 2006). Social “solidarity” is therefore seen as the basis for the public welfare state, including the public system of social assistance and social insurance. The essence of this principle manifests itself mainly in breaking a link (the equivalency) between contributions paid and the amount of benefit received. The problem was whether the required condition of an actual stay in the territory of Poland, next to the requirement of residency in the territory of Poland, which are the necessary conditions to qualify for the social pension, do not limit the constitutional right to social security. The Court answered that the abovementioned obligations are:

*... contrary to the principle of social justice, because they exclude persons entitled to the social pension from an equitable distribution of social benefits financed by the state budget solely on the grounds of an arbitrary, unjustified and anachronistic condition like an actual stay in the territory of Poland.*

Another judgement that could be presented in this context is ruling K 43/12<sup>8</sup> on raising and equalising the retirement age.<sup>9</sup> The principle of social “solidarity” has become a justification for this judgement. The Court ruled that the higher retirement age was justified by such principles as:

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8 Judgement of the Constitutional Tribunal of 7 May 2014, K 43/12.

9 According to the amendment of 2012 of the Act on pensions from the Social Insurance Fund, the retirement age was 67 for both men and women. From 1 January 2013, it has gradually been extended. This age would be finally fixed at 67 for men in 2020 and for women in 2040 (when it would be equal for both genders). But the reform was reversed in 2016 by the new government.

- Justice (all subsequent generations of the insured shall equally bear the cost of retirements);
- Social solidarity;
- Sustainability of public finances.

The Court also argued, in the context of retirement age reforms in Poland, that the fundamental value and principle is the “solidarity” of insured persons. As one can see, the Polish Constitutional Court often refers to the principle of “social solidarity” in rulings concerning social justice. However, social justice is clearly embedded in the Polish Constitutional legislation; social “solidarity” is only a default principle and is still not fully recognised and given intrinsic normative meaning (Pułko 2015).

### *Solidarity and Social Security*

Solidarity is a conjectural value on which, according to scholars, social security is based. According to some, it is even its “key element” (van Praag and Konijn 1983). “Solidarity” refers to the situation in which all (or specified groups of) people share risks by mutual contributions. Thus, members of the community bear social risks (old age, illness, unemployment, etc.) by mutual support. It could also be interpreted as a fundamental obligation towards the poor and/or vulnerable groups (van Vugt and Peet 2000).

Social security is guaranteed in the Polish Constitution (e.g., in the Art. 67).

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.*
2. *A citizen who is involuntarily without work and with no other means of support, shall have the right to social security, the scope of which shall be specified by statute.*

In its rulings, the Constitutional Court often refers both to “social security” and “solidarity” as principal values such as in the judgement of 19 December 2012 (K 9/12), when the Court ruled that the episodic regulations, which in 2012 suspended the “Swiss indexation” based on a defined percentage rate and introduced the “quota indexation” of pensions, are in accordance with the Polish Constitution. In 2012, indexation consisted of

adding an indexation amount of 71 PLN to the amount of the received benefit. Previously, all pension benefits were indexed in accordance with changes both in wages and prices. This meant that the pensions lower than 1480 PLN increased more than if they were indexed on a basis of a defined percentage rate. On the other hand, pensioners receiving pensions higher than 1480 PLN received less than they would normally receive under the previous system.

The Constitutional Court underlined that progressive income inequality among society members forced the legislature to seek an optimum benefit indexation mechanism in 2012. The Court concluded that by introducing the ad hoc indexation of pensions in 2012, the legislature did not violate the essence of the constitutional right to social security. Moreover, this action was justified by the constitutional principle of sustainability of public finances and social solidarity.

### *Solidarity and Sustainable Development*

Another value closely related to “solidarity” in the Polish constitution is sustainable development, which could be interpreted also as “intergenerational solidarity”. In this context, “solidarity” is understood as existing relations between the younger and older generations (also those who live now and will live in the future) in the field of social security as well as protection of natural and cultural heritage in order to ensure all generations a life of dignity. According to Art. 5 of the Constitution.

*The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.*

From the fact that there is an appeal to the principle of sustainable development in the first chapter of the Constitution (which is a chapter of principles), it can be concluded that the state and its citizens have certain obligations towards future generations and should be in “solidarity” with them while making law. This is emphasised directly in Art. 74, paragraph 1, which states “*Public authorities shall pursue policies ensuring the ecological security of current and future generations*”, and paragraph 2, which states “*Protection of the environment shall be the duty of public authorities*”.

This is a difficult obligation, one in need of finding solutions favourable both to economic development and the environment in accordance with the principle of proportionality and social market economy (Pułto 2015). This part of the constitutional provisions meets numerous obstacles due to, for example, logging in ancient forests (Errikson 2016) or the highest levels of pollution in the European Union (Boren 2015).

### *Solidarity in Development Cooperation*

In the field of developmental aid, the Polish parliament issued a law on “development cooperation” (Ustawa o współpracy rozwojowej) on 1 Oct 2011 (Dz. U. from 2011, no. 234/1386). The law regulates the mechanisms of cooperation with and assistance to developing countries (i.e., beneficiaries listed by the OECD, including the countries of the “Eastern Partnership”). It regulates the mechanisms of financial help and administrative cooperation whereas under the term of “developmental cooperation” it is understood as

*... an array of activities held by government administrative agencies in order to grant developmental assistance to developing countries and/or their societies, according to the principle of international solidarity (....) (Article 2.1.)*

But, as Grupa Zagranica states:

*We failed to create an effective programme of Polish bilateral development aid with the objectives and results, adapted to the needs of our priority countries and harmonised with actions of other donors. There is an urgent need to elaborate realistic plans that will significantly increase both the volume and quality of Polish development aid. (Polish Development Cooperation 2012)*

The volume of Polish development aid still remains at a very low level. The total value of Polish development aid in 2015 accounted for 0.1 % of GDP. This level has remained practically unchanged for years (OECD 2015).

### *Solidarity in Social Dialogue*

During the economic crisis, the Polish government was accused by trade unions of not being truly engaged in social dialogue (Gardawski 2014). The social dialogue in Poland was broken in June 2013 when the trade unions left deliberations with social partners in protest against planned

changes in the labour law in Poland, which envisaged, for example, the introduction of flexible working hours and extension of the settlement period from 4 to 12 months. The trade unions have found that social dialogue between the government, employers and trade unions is a sham, because the unions' demands are not taken into account (Gardawski 2014). However, by leaving the Tripartite Commission for Social Dialogue trade unions have taken away the possibility of any impact on politics.

The new Council of Social Dialogue replaced the existing Tripartite Commission for Social Dialogue (*Komisja Trójstronna ds. Społeczno-Gospodarczych*) and is expected to successfully deal with the social dialogue crisis in Poland.

The Council of Social Dialogue is to implement “*the principle of participation and social “solidarity” in employment, improve the quality and effectiveness of implementing the socio-economic strategy and build around them favourable conditions of cooperation between social partners in Poland — trade unions, organisations of employers and the government.*“

### *Solidarity and Protection of Foreigners*

A discourse on immigration has been present in the public media since the refugee influx into the EU in 2015. Apart from the EU-wide reasons, three country-specific arguments have been raised against accepting the refugees: a) necessity to help “hungry Polish children” of poor families first, b) necessity to support Polish citizens living in Ukraine since the second World War in readiness for their return to the homeland first, c) the issue of refugees is primarily a problem of Germany, to which Poland need not be in solidarity since Germany abused Polish security when cooperating with Russia on the gas pipe investment, Nord Stream. Anti-refugee arguments were particularly offensive during the electoral campaign in 2015; the Law and Justice leader claimed refugees might bring “protozoans and parasites” to Poland. Simultaneously, a bottom-up civic movement supporting refugees coming to Poland has been organising country-wide marches with the motto “welcome to Poland. Religion is important in the framing of migration problems in Poland. Poland is a homogeneous country in terms of religion (more than 87% are Catholics). Only 0.07% of the citizens in the 2011 census declared themselves to be members of Islamic communities (Main Statistic Office 2013). The ethnic and

religious homogeneity of Polish society could be the reason why, although Poles' attitudes towards immigrants is improving, there is still a large percentage of citizens who disapprove of immigration. According to the Public Opinion Research Centre (CBOS) survey, 53% of respondents claim that Poland should not accept any refugees and 63% are against refugees from Africa and the Near East. Forty-one percent are in favour of accepting refugees but most of them claim that the refugees should stay in Poland only until they are able to return to their countries of origin. Only 4% believe that there are not enough immigrants in the country, which is particularly interesting in the country with the smallest rate of immigrants among all EU Member States (CBOS 2016).

Despite this, the principle of “solidarity is enumerated in the amendment of the act granting protection to foreigners within the territory of the Republic of Poland from 2015. It has changed the definition of relocation of a foreigner, stating that

*relocation is the moving of a foreigner who has applied for international protection at the territory of a given member state (...) or displacement of a foreigner having international protection from the other EU member states to the territory of the Republic of Poland, based on the responsibility and solidarity of the EU member states (Art 2, 9 d).*

## Conclusion

The notion of “solidarity” is very vivid in the Polish discourse and legal system. It has deep historical roots in the “Solidarity” trade union movement as well as Catholic social teaching, both of which have helped in the democratisation of the country. However, after this transition, Polish policies have been dominated by neoliberal discourse and solutions. For this reason, the Polish welfare state could be called “flexi-insecurity”, which is far away from solidarity. Moreover, the Polish Constitution was adopted nearly a decade after 1989, in 1997, when public enthusiasm had dwindled. The principle of “solidarity” does not appear in its first chapter, which contains the main principles, but it is in the preamble. It is one of the most important and universal values that should be taken into account when applying the Constitution, but its character is not clear nor binding.

Despite this, “solidarity” is a part of other main principles of the Polish system, like social dialogue, common good or social justice. The Polish Constitutional Court moves in line with the philosophy known as “social

solidarity” and emphasises this principle in many cases even though it is not derived from the Constitution directly. Polish constitutionalists state that “solidarity” is not fully recognised by courts, and it is an intrinsic constitutional norm. However, they divide the main principles into two groups: those bound with traditional canon of Constitutional matters and those that are becoming a part of this canon right now. “Solidarity” is in the second group.

So, “solidarity is a principle which causes many paradoxes in Poland. On one hand, the “obligation of solidarity” written in the preamble of the Polish Constitution suggests that it is one of the principles that forms the basis of the state system. On the other hand, Polish constitutionalists show that the principle of “solidarity” inscribed in the Polish Constitution is rather a “general idea”, impossible to define, unclear, with a non-binding character. The Constitutional Court often refers to “solidarity”, especially “the social solidarity” principle, but rather as the part of other principles. Moreover, in this time of crisis of the functioning of the Constitutional Court, it is unclear and difficult to foresee how it will adjudicate in the future, under political pressure.

The second paradox is that Poland, the country of the “Solidarity movement that helped to overthrow communism, has implemented since 1989 rather neoliberal political and economic solutions, based more on individualism than on social solidarity.

Finally, as a Catholic country where almost 90% of citizens declare themselves as Catholic, Poland is also one of the countries with the lowest levels of empathy and tolerance, both of which are imperative for “solidarity to thrive.

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