

Montesquie's separation of powers principle:

- legislative
- executive
- judicial

Polish Constitution:

Article 4 Supreme power in the Republic of Poland shall be vested in the Nation.

The Nation shall exercise such power directly or through their representatives.

### Chapter III SOURCES OF LAW

#### Article 87 of the Constitution

The sources of universally binding law of the Republic of Poland shall be: the Constitution, (*Konstytucja*) statutes, (*ustawy*) ratified international agreements, and regulations (*rozporządzenia*)

Article 88 The condition precedent for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof.

#### Article 8

1. The Constitution shall be the supreme law of the Republic of Poland.
2. The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise.

Article 2 The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.

### Chapter II GENERAL PRINCIPLES

Article 30 The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

Article 31 1. Freedom of the person shall receive legal protection.

2. Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law.

3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

#### Article 64

Everyone shall have the right to ownership, other property rights and the right of succession.

1. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
2. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

Article 73 The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone.

#### Article 92

1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

Article 89 Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns:

- 1) peace, alliances, political or military treaties;
- 2) freedoms, rights or obligations of citizens, as specified in the Constitution;
- 3) the Republic of Poland's membership in an international organization;
- 4) considerable financial responsibilities imposed on the State;
- 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

#### Article 91

1. After promulgation thereof in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.
2. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.
3. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.

Article 9 The Republic of Poland shall respect international law binding upon it.

**What is „international law”?**

term "international law" can refer to three legal disciplines:

1. Private international law
2. Public international law

Private international law (conflict of laws) addresses the questions of

- (1) national court jurisdiction over a particular case
- (2) national law(s) applicable to the case matter

Private International Law

(O.J. 2011 No. 80, item 432; in force from 16 May, 2011)

Article 2. 1. If statutory law specifies the law of one's nationality as applicable, a Polish national shall be subject to Polish law, even if the law of another country recognizes him as its own national.

2. A foreigner who is a national of two or more States shall be subject, as to the law of his nationality, to the law of the country with which he is most closely connected.

Article 4. 1. In cases provided by the statutory law, the applicable law may be chosen by the parties.

2. The choice of law shall be made expressly or shall clearly result from the circumstances of the case, unless the provision allowing a choice of law provides otherwise.

public international law

laws governing the relations among independent states and international organisations

differs from other legal systems in that it primarily regulates the actions and omissions of states rather than individuals

public international law includes:

- ✓ law of treaties
- ✓ law of sea
- ✓ international criminal law
- ✓ international humanitarian law
- ✓ international environmental law
- ✓ international Internet law

supranational law

Supranational law or the law of supranational organizations, which concerns regional agreements where the special distinguishing quality is that laws of nation states are held inapplicable when conflicting with a supranational legal system.

## Article 38 Statute of the International Court Of Justice

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. (...) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

International conventions *international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*

treaties/coventions/agreements/charters

written/spoken

multi-/bilateral

**International custom** *evidence of a general practice accepted as law*

two elements: *usus (state practice) + opinio juris*

### **General principles of law recognized by civilized nations**

- the scope is unclear and controversial
- may include legal principles common to a large number of systems of national law:
  - principle of good faith
  - estoppel a state that has, by its conduct, encouraged another state to believe in the existence of a certain legal or factual situation, and to rely upon that belief, may be estopped from asserting a contrary situation in its dealings
  - equity is said to "mitigate the rigor of common law", allowing courts to use their discretion and apply justice in accordance with natural law.

**judicial decisions and the doctrine** *judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.*

### **Other sources of international law**

- ✓ binding decisions of international organizations
- ✓ acts of state
- ✓ soft law