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Legal Protection of Life in the Constitutions of the Republic of Poland of March 17, 1921 and April 2, 1997

ABSTRACT

The issue of legal protection of life from Article 38 of the 1997 Constitution is one of the most important dilemmas of modern Polish law. This issue was already regulated in the March Constitution. The purpose of the article is to present the normative content of the legal protection of life on the basis of both constitutions. The research objective is to determine the importance of the two constitutions in providing legal protection of life in the context of the tasks of the ordinary legislature and the importance of judicial decisions. The text confronts the assumptions of the system legislator with lower-level regulations. Particular attention has been paid to the issue of assessing the compatibility of these solutions with the constitution's design. Consideration was given to the influence of international organizations on the content and implementation of the protection of life in the Polish legal order. The study includes an analysis of the literature on the subject. The dogmatic and historical-legal method was used. The deliberations take into account the weaknesses and strengths of entrusting the judiciary with the constitutional task of defining the normative content of the protection of life. Contemporary public disputes in this matter should prompt greater efforts in clarifying constitutional solutions. It is worth bearing in mind the experience of the 1921 Constitution.

Key words: legal protection of life, Polish Constitution of 1921, Polish Constitution of 1997

1. General remarks

Since the establishment of the law of March 17, 1921 – the Constitution of the Republic of Poland, more than century has passed. The passing of time allows us to look at the previous regulations from different perspectives. Article 95 of the March Constitution stipulated that “The Republic shall ensure within its territory the complete protection of life, liberty and property of all without distinction of origin, nationality, language, race or religion”¹. It should be highlighted that this is one of the oldest constitutional provisions in Europe that provided legal protection of life². For that reason alone, it is worth considering the subject in question. Relevant legal regulations were also embodied in §6 sentence 1 of the Constitution of Finland of July 17, 1919³ and §106 paragraph 2 of the Constitution of the Czechoslovak Republic of February 29, 1920⁴.

The abovementioned regulation from Article 95 of the March Constitution was not retained under the Polish Constitution of April 23, 1935⁵, and the legal and factual actions taken by the occupying forces on Polish territory during World War II amounted to a constant threat to the lives of persons of Polish nationality. Therefore, during this period, there could not be any protection of human life. In the post-war period, on the other hand, the legal regulation of Article 95 of the March Constitution, as far as the protection of life was concerned, did not meet with a positive appreciation from the authorities of the People’s Republic of Poland for ideological reasons. The new constitutional system did not stipulate the legal protection of life in the Constitutional Law of February 19, 1947 on the System and Scope of Action of the Supreme Authorities of the Republic of Poland⁶ nor in the Constitution of the People’s Republic of Poland of July 22, 1952⁷. A change has occurred with the political transition. With the December amendment of the Constitution of the People’s Republic of Poland⁸, under which the principle of a democratic state of law was established, it became evident that the Polish normative system would also require the provision of legal protection of life. It is worth highlighting that it was on the

¹ Journal of Laws 1921 no. 44, item 267, hereinafter: the March Constitution.

² R. Grabowski, *Ochrona życia w polskich przepisach konstytucyjnych w latach 1921–1939*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji” 2008, no 3052, p. 87.

³ Constitution of Finland, <http://libr.sejm.gov.pl/tek01/txt/konst/finlandia97-a.html>, (access: 24.07.2022).

⁴ Constitution of the Czechoslovak Republic of February 29, 1920, <https://archive.org/details/cu31924014118222/page/n43/mode/2up>, (access: 24.07.2022).

⁵ Journal of Laws 1935 no. 30, item 227.

⁶ Journal of Laws 1947 no. 18, item 71 as amended.

⁷ Consolidated text of the 1976 Journal of Laws no. 7, item 36, hereinafter: the Constitution of the People’s Republic of Poland (hereinafter: Constitution PRP).

⁸ Journal of Laws 1989 no. 75, item 444.

basis of this legal provision – then Article 1 of the Constitution of the People’s Republic of Poland – that the Constitutional Court derived the “constitutional protection of human life”⁹.

It was obvious that the transformation of the political system in 1989 would be connected with the need to issue legal regulations on the protection of life with consideration to the current socio-political situation. The issue of legal protection of life was not regulated in the Constitutional Act of October 17, 1992 on Mutual Relations Between the Legislative and Executive Authorities of the Republic of Poland and on Local Self-Government¹⁰, but it was known that the issue in question would be subject to normalization in the new Basic Law under preparation. After much deliberation, many proposals, in its final form, the above matter was regulated in Article 38 of the Constitution of the People’s Republic of Poland of April 2, 1997¹¹, which stipulates that every person shall be guaranteed the legal protection of life.

In both the 1921 and 1997 Basic Laws there is a crucial formulation for providing for the legal protection of life. This text provides a legal characterization of the constitutional provisions in question, along with a search for an answer to the question of the relevance of the Basic Law in ensuring the protection of life under these constitutions. The regulation in Article 95 of the March Constitution is the equivalent of the legal-constitutional protection of life in Article 38 of the 1997 Constitution, although this is not widely exposed in literature on the subject¹². Therefore, it is worth pondering the significance of the March Constitution and the current Constitution in setting up an effective system of legal guarantees for the protection of life. By making possible adjustments, it is worth to keep in mind the experience of the period of the March Constitution. The issue of the protection of life has become particularly discursive after October 20, 2020¹³, when the judgment of the Constitutional Court was handed down, concerning the acceptability of aborting pregnancy due to severe foetal impairment¹⁴. This conflict is largely connected with the adopted constitutional regulation of the protection of life and the question of the importance of the constitutional court in this matter.

⁹ Constitutional Tribunal Judgment of May 28, 1997, ref. K 26/96.

¹⁰ Journal of Laws 1992 no. 84, item 426.

¹¹ Journal of Laws 1997 no. 78, item 483, as amended, hereinafter: the 1997 Constitution.

¹² P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2008, p. 97.

¹³ Constitutional Tribunal Judgment of October 22, 2020, ref. K 1/20.

¹⁴ Legal science points out the legal defectiveness of this decision due to the manning of the jury. More: A. Rakowska-Trela, *Wyrok czy „niewyrok”. Glosa do wyroku TK z dnia 22 października 2020 r.*, K 1/20, „Przegląd Sądowy” 2021, nr 6, pp. 106-118.

2. The source of constitutional rights and freedoms in the 1921 and 1997 Constitutions

The analysis of the principle of the protection of life in the 1921 and 1997 Constitutions first needs to point out the source of constitutional rights and freedoms. This is because any consideration of human rights demands the specification of their axiological basis, which is of particular importance with regard to the assertion of such a fundamental value as human life. In the March Constitution, the source of individual rights and freedoms was based on natural law¹⁵. Such a conclusion can be drawn based on an analysis of the content of the preamble to the 1921 Basic Law. This is demonstrated by the words “(...) the good of the entire, united and independent Mother – Land with an eye on, and desiring to establish Her independent existence, power and security and social order on the eternal principles of law and liberty (...) – this is the Constitutional Law we adopt and establish”. The phrase “eternal” used in this context is referring to natural law, since positive law is temporal in nature¹⁶. Thus, the above phrase means that the legislator acknowledged the rights and freedoms as being, as it were, originally in existence, even earlier than the time of the enactment of the law. In this view, the role of the legislature remained to create an effective system for the protection and guarantee of these rights¹⁷. It is advisable to expose the above excerpt from the preamble, because the lack of adequate regulation in the articulated part of the 1921 Basic Law may overshadow the recognition of the legal-natural source of human rights in the March Constitution.

The 1921 Constitution embraced a broad catalogue of rights and freedoms, which encourages the conclusion that a liberal conception of human rights was assumed¹⁸. With this, it was aimed at separating itself from the experience of tyranny during the period of captivity¹⁹. The founders of the March Constitution aspired to guarantee the highest standards of protection of constitutional rights and freedoms. In general, this act referred to most of the legal institutions of the era of liberal society at that time. Nevertheless, the system of the Second Republic was missing an important element, namely the institution of constitutional judiciary, although it was postulated in the views of legal doctrine²⁰. It has been

¹⁵ A. Burda, *Konstytucja marcowa z opracowaniem*, Lublin 1983, p. 52.

¹⁶ Ibidem.

¹⁷ W. Sokół, *Uwarunkowania, inspiracje i koncepcje Konstytucji marcowej*, „Myśl Polityczna. Political Thought” 2021, no. 1, p. 9.

¹⁸ M. Kallas, *Historia ustroju Polski X–XX w.*, Warszawa 1996, p. 315.

¹⁹ A. Ajnenkiel, *Konstytucje Polski 1791–1997*, Warszawa 2001, p. 181.

²⁰ M. Granat, *Problem kontroli konstytucyjności prawa w Polsce międzywojennej*, [in:] *Prawo konstytucyjne II Rzeczypospolitej. Nauka i instytucje. XLVII Ogólnopolski Zjazd Katedr i Zakładów Prawa Konstytucyjnego*, ed. P. Sarnecki, Kraków 2000, p. 101.

postulated that a separate constitutional court should be established or that the competence to review the constitutionality of laws should be delegated to other courts²¹. Authors of the interwar period deemed this absence a significant weakness in the system of guarantees for the protection of the rule of law and human rights²². But there is no doubt that the lack of a constitutional judiciary eroded the system of guarantees of constitutional rights and freedoms, which included the legal protection of life. The impossibility of challenging a lower-order legal regulation in light of the pattern of Article 95 of the March Constitution meant that the protection of life did not receive adequate assurance in the form of the possibility of abrogation of a legal norm inconsistent with Article 95 of the March Constitution²³. Moreover, constitutional judgment could have then played an effective role in clarifying the normative content of the protection of life, which could have provided guidance to the ordinary legislator.

After World War II, the positivist conception of human rights was clearly preferred. During the communist times, the legislator was completely arbitrary in defining the catalogue of human rights, their subject matter and scope²⁴. Beliefs that “eternal” rights must be considered were repudiated. In other words, citizens could only be afforded what the law explicitly authorized them to do within the limits of the law’s provisions. As mentioned, the legal protection of life was not provided for in the law of the People’s Republic of Poland, and many legal regulations, including those on the widely permitted termination of pregnancy, contradicted the idea of protecting life²⁵.

The political reforms towards democracy that began in 1989 necessitated the Polish legislature to relinquish its positivist view of human rights. The 1997 Constitution already sets forth in the preamble that there are “rights fundamental to the state based on respect for freedom and justice, cooperation between authorities, social dialogue and the principle of subsidiarity strengthening the powers of citizens and their communities”. In turn, Article 5 of the 1997 Constitution unambiguously indicates, among the goals of Polish statehood, the provision of human and civil liberties and rights, and therefore the legal protection of life. However, the current Basic Law does not provide, either in

²¹ M. Starzewski, *Środki zabezpieczenia prawnego konstytucyjności ustaw*, Kraków 1928, pp. 248, 316.

²² E.g. A. Peretiatkowicz, *Luka w konstytucji polskiej*, „Przegląd Wszechpolski” 1923, 7, July, nr 7, pp. 498-505 – Reprinted in the collection: *O praworządność i zdrowy ustroj państwowy. Zagadnienia zabezpieczenia konstytucyjności ustaw w polskiej myśli politycznej i prawniczej okresu międzywojennego*, Kraków 2006, pp. 36-44.

²³ R. Grabowski, *Ochrona życia...*, p. 102.

²⁴ B. Bednarczyk, *Granice władzy – wybrane problemy praw i wolności człowieka*, „Acta Academiae Modrevianae” 2001, pp. 86-87.

²⁵ See: Law of April 27, 1956 on the conditions for permissible termination of pregnancy (Journal of Laws 1956 no. 12, item 61).

the preamble or in the articulated part, reference to “eternal” rights. In contrast, Article 30 of the 1997 Constitution stipulates that the source of constitutional rights and freedoms in Polish law is human dignity, which is inherent and inalienable²⁶. Under this legal provision, it can be argued that modern Polish law is in favor of the legal-natural concept of human rights²⁷, however, this was expressed through a different linguistic construction and directly in the articulated part of the 1997 Basic Law, which also has the effect of strengthening the legal protection of life. The protection of human dignity and the protection of life are closely intertwined²⁸. This means that the system of human and civil rights and freedoms cannot be developed completely arbitrarily by the legislator, its role remaining primarily to assure the protection of individual human rights, including, above all, the protection of life, without which, other constitutional rights and freedoms cannot be guaranteed, as it is fundamental in character. The Legislator docks the material scope of human rights and delimits them, but with a need to respect the protection of the inherent and inalienable dignity of the human being²⁹.

Human dignity is inherent and inalienable, which means that this attribute is enjoyed by everyone simply by virtue of the fact that he or she is a human being, and neither the specific behavior of the person in question nor his or her personal qualities are relevant³⁰. Even a person who behaves in the most punishable manner still preserves his or her human dignity, and therefore all constitutional rights and freedoms stemming from it, including the right to the protection of life. The legislature in 1997 rejected the idea that in certain cases it is possible to lose this attribute, it cannot be waived, nor can anyone strip someone of this dignity by an act of public authority³¹. Such anchoring of human dignity seems to eliminate the acceptability of the death penalty³², which is specifically relevant to the protection of life, although this is contested

²⁶ F.J. Mazurek, *Pojęcie godności człowieka. Historia i miejsce w projektach Konstytucji III Rzeczypospolitej*, „Roczniki Nauk Prawnych KUL” 1996, vol. 6, p. 6 and next.

²⁷ L. Garlicki, *Commentary on art. 30*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom III*, ed. L. Garlicki, Warszawa 2003, p. 11.

²⁸ Judgment of the Constitutional Court of 22.01.2013, P 46/09, OTK–A 2013, No. 1, pos. 3.

²⁹ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2013, p. 43.

³⁰ L. Garlicki, *Commentary on art. 30*..., p. 17.

³¹ S. Zieliński, *Rozumienie godności człowieka i jej znaczenia w procesie stanowienia i stosowania prawa. Propozycja testu zgodności regulacji prawnych z zasadą godności człowieka*, „Przegląd Sejmowy” 2019, no. 4, p. 110.

³² P. Sarnecki, *Commentary on art. 38*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom III*, p. 6; P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2008, p. 97.

in literature³³. At this point it is worth remembering that the death penalty had been allowed in the system of criminal punishment since the Decree of the President of the Republic of Poland of July 11, 1932 – Penal Code³⁴. When evaluating the criminal law regulations of 1932 from the point of view of the protection of life, one must keep in mind the standards in force at the time. It would be a methodological error to adopt the current standards of protection of life to the analysis of the law. It should be remembered that despite the existence of the death penalty in the 1932 Criminal Code, the Polish criminal law system was characterised by the principle of humanitarianism.

3. The genesis of the legal protection of life in the drafts of the 1921 and 1997 Constitutions of the Republic of Poland and the international context

In analyzing the question of legal protection of life in both constitutions, it is desirable to bear in mind the genesis of the legal provisions examined. The legislative drafts presented, as well as the discussions preceding the enactment of the constitution can be helpful in determining the normative meaning of the legal provisions enacted, and they also indicate the rank of the matter in question in the assumptions of the legislator.

It is worth noting that the drafts of the March Constitution did not provide for the protection of life, which leads to the view that no special importance was attached to this matter³⁵. For this reason, the content of Article 95 of the March Constitution as enacted came as a bit of a surprise, since legal protection of life was not provided for in the drafts: Sejm–Constitutional Commission (established by the Provisional Council of State) – the draft of July 28, 1917.³⁶, J. Buzek’s draft, the so-called American draft (issued by the Constitutional Bureau of the Presidium of the Council of Ministers)³⁷, M. Niedziałkowski’s draft, the so-called People’s draft (issued by the Constitutional Bureau of the Presidium of the Council of

33 R. Grabowski, *Prawo do ochrony życia w polskim prawie konstytucyjnym*, Rzeszów 2006, p. 181; B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. Komentarz*, Warszawa 2012, p. 259.

34 Journal of Laws 1932 no. 60, item 571.

35 R. Grabowski, *Ochrona życia...*, p. 95-96.

36 Text of the draft in: J. Buzek, *Projekty konstytucji Rzeczypospolitej Polskiej*, part I, Warszawa 1920, pp. 116-138. Discussion of the draft: Komarnicki, *Polskie prawo polityczne. Geneza i system*, Warszawa 2022, pp. 136-148.

37 J. Buzek, *Projekt Konstytucji Rzeczypospolitej Polskiej oraz uzasadnienie i porównanie tegoż projektu z konstytucją szwajcarską, amerykańską i francuską*, Warszawa 1919. Discussion of the project: W. Komarnicki, *Polskie prawo polityczne...*, pp. 194-202.

Ministers)³⁸, the so-called French draft, probably by W. Wróblewski³⁹ (issued by the Constitutional Bureau of the Presidium of the Council of Ministers)⁴⁰. This type of legal regulation was also not provided for in the draft of the commission appointed by Prime Minister Ignacy Paderewski on January 25, 1919, known as the “Survey for the Evaluation of Draft Constitutions” – draft of March 12, 1919⁴¹, W. Wakar draft, entitled “the Basis of Order of the Republic of Poland”⁴²; S. Wojciechowski, entitled “Constitutional Declaration”⁴³, the draft of the Union of Polish Socialist Deputies⁴⁴; the draft of the People’s National Union⁴⁵. As a result, it is difficult to determine what the intentions of the Polish legislature were in providing legal protection of life based on the materials of the legislative process due to the lack of proposals submitted.

On the other hand, the situation was completely different in the work on the current Basic Law of 1997, as we can note the existence of many, varied proposals for regulating the issue of legal protection of life. A detailed discussion of their content is beyond the scope of this text, but it is worth at least mentioning them and citing the editorial proposals submitted, as this shows that from the beginning of the work on the 1997 Basic Law, the issue of legal protection of life was the subject of keen interest of the drafters. Legal protection of life was provided for in:

- Article 6 of the Charter of Rights and Freedoms of the presidential draft – “human life is inviolable”⁴⁶.
- Article 29 of the Democratic Left Alliance draft – “Every human being has an inherent right to life. (2) The death penalty may be provided by law only for murder”⁴⁷.

³⁸ Text of the project: Legislative Diet, print No. 443 C. Discussion of the draft: S. Krukowski, *Konstytucja Rzeczypospolitej Polskiej z 1921 r.*, [in:] *Konstytucje polskie. Studia z dziejów polskiego konstytucjonalizmu*, vol. 2, ed. M. Kallas, Warszawa 1990, pp. 26-28.

³⁹ S. Krukowski, *Nieznany projekt konstytucji polskiej z 1919 roku*, „Czasopismo Prawno-Historyczne” 1975, no. 2, pp. 260-261.

⁴⁰ Text of the project in AAN (Archives of New Records), PRM, Numerical File 11265/20.

⁴¹ Text of the draft in: Buzek, *Projekty konstytucji...*, pp. 139-169; discussion of the draft in: W. Komarnicki, *Polskie prawo polityczne...*, pp. 149-161.

⁴² Text of the draft: Legislative Sejm, print no. 443. Discussion of the draft: S. Krukowski, *Konstytucja...*, pp. 37-40.

⁴³ Text of the project: the Legislative Diet, print No. 443 A. Discussion of the draft: S. Krukowski, *Konstytucja...*, pp. 40-42.

⁴⁴ Text of the draft: Buzek, *Draft Constitutions...*, pp. 47-62. Discussion of the draft: S. Krukowski, *Konstytucja...*, pp. 43-46.

⁴⁵ Text of the draft: Buzek, *Draft Constitutions...*, pp. 63-80. Discussion of the draft: S. Krukowski, *Konstytucja...*, pp. 46-49.

⁴⁶ Text of the draft: parliamentary print no. 550.

⁴⁷ Text of the draft: *Komisja Konstytucyjna Zgromadzenia Narodowego. Projekty konstytucji*, Warszawa 1993, p. 25.

- Article 17 (1) and (2) of the Senate draft – “The Republic of Poland recognizes the inherent right of every human being to life from conception and guarantees its legal protection. (2) No one shall be punished by death”⁴⁸.
- Article 21 of the Polish People’s Party draft – “1. Every human being has the right to life. 2. the death penalty shall be abolished”⁴⁹.
- Article 21 of the Confederation of Independent Poland draft – “(1) citizens are entitled to the cardinal rights: (a) the right to life”⁵⁰.
- Article 14 of the Democratic Union draft – “Human life is inviolable. No one shall be punished by death”⁵¹.
- Article 9(1) of the civic draft – “the fundamental right of the human person, guaranteed by the Republic of Poland, is the right to life. Human life is subject to special protection from conception to natural death”⁵².

The abovementioned drafts of the 1997 Constitution did not directly refer to the content of Article 95 of the March Constitution. This applies to both the substantive and formal treatment of this issue. For it is evident that the drafters intended to separate the subject regulation of the legal protection of life and include it in a separate editorial unit. Interestingly, the formula “right to life” was also more commonly found in the above drafts than the phrase “legal protection of life”. In the ultimate discussion, nonetheless, the view prevailed that the legislator does not guarantee the right to life, but can and should protect it in the editorial formula legal protection of life⁵³. It is necessary to divide this view and choice, recognizing that the phrase right to life is only a colloquial mental shortcut and should not be understood literally.

In the science of law, it is stated that the inclusion of the legal protection of life in Article 95 of the March Constitution was prompted by an external factor, i.e. the need to bring Polish law in line with international law, and not by the Polish legislature’s own initiative. Already in the interwar period, J. Makowski argued that: “In carrying out the provisions of Article 2 of the Treaty on Minorities, the Constitutional Sejm incorporated the first paragraph of this treaty into Article 95 of the Constitution, which, although it does not say so explicitly, applies not only to Polish citizens, but to all persons living on the territory

⁴⁸ Text of the draft: Ibidem, p. 4.

⁴⁹ Text of the draft: Ibidem, p. 54.

⁵⁰ Text of the draft: Ibidem, p. 82.

⁵¹ Text of the draft: Ibidem, p. 41.

⁵² Text of the draft: https://www.solidarnosc-swietokrzyska.pl/pl/aktualnosci/1066,konstytucja_obywatelska_-_przypomnienie_obywatelskiego_projektu_konstytucji_nszcz_quot_solidarnosc_quot.html, (24.07.2022).

⁵³ Biuletyn KKZN, 1995, no. 12, p. 72.

of the Polish State, as is evident from the wording of paragraph 2 of the same article”⁵⁴.

This author alludes to the Treaty for the Protection of Minorities, known as the Little Treaty of Versailles, which was signed by representatives of the Republic along with the Treaty of Versailles on June 28, 1919⁵⁵. It should be recalled that Article 2 of the Treaty on Minorities stipulated that: “The Government of Poland undertakes to grant to all inhabitants without distinction of birth, nationality, language, race or religion complete and total protection of life and liberty (...)”. Clearly, the impact of the content of Article 2 of this act on the drafting of the provision of Article 95 of the March Constitution is evident.

Furthermore, W. Komarnicki argued that “our Constitution’s adoption of the provision of complete protection of life, liberty and property for everyone in the territory of the State should be recognized as a consequence of both the basing of the system of the Republic on the principles of freedom, democracy and the rule of law, as well as the historical Polish traditions of freedom (...) Despite this, though, the so-called Major Powers, i.e., the great powers of the coalition, found it necessary to provide international guarantees for the protection of the civil rights of those citizens of the Polish State who belong to racial, religious and linguistic minorities, which they carried out in the treaty concluded with Poland at Versailles on June 28, 1919”⁵⁶. Indeed, it seems that it was the nationality structure of the society of the newly created state that contributed to attaching special importance to ensuring constitutional rights and freedoms to all persons living in the territory of the Republic of Poland. In fact, the borders of the reborn state after 123 years of occupation were inadequate for the situation⁵⁷, which may have been understood, and therefore the international community introduced certain requirements for the legal protection of the life of every person regardless of the criterion of citizenship, which was of particular relevance in the newly created states.

Therefore, it seems justified to say that the content of Article 95 of the March Constitution was developed primarily under the influence of Article 2 of the Treaty on Minorities. This position is also shared by contemporary constitutionalist Radosław Grabowski⁵⁸. However, it seems that the influence of Article 2 of the Treaty on Minorities on the shape of the protection of life in

54 J. Makowski, *Konstytucja Rzeczypospolitej Polskiej. Opracował i objaśnił J. Makowski*, Warszawa 1924, pp. 100-101.

55 Traktat między Głównymi Mocarstwami sprzymierzonymi i stowarzyszonymi a Polską, Wersal, June 28, 1919, (Journal of Laws 1920, no. 110, item 728).

56 W. Komarnicki, *Zarys ustroju państwowego Rzeczypospolitej Polskiej*, Warszawa 1923, pp. 97-98.

57 Cz. Brzoza, *Początki niepodległości*, [in:] *Historia Polski 1918–1945*, Cz. Brzoza, A.L. Sowa, Kraków 2006, p. 26.

58 R. Grabowski, *Ochrona życia...*, p. 93.

Polish law at that time should not be overestimated, given the lack of possibility to challenge the actions of the Polish state authorities in the international forum. For it needs to be recognized that the then system of human rights protection under the League of Nations was formed gradually, and there was no real influence of this organization on the detailed content of the legal protection of life in individual states at that time. This was due, among other things, to the lack of an appropriate international tribunal to consider complaints by individuals against states that violated the treaty obligations.

At the time, a standard for the protection of life in the global community was not generated. It can be concluded that until the 1950s the primary role in the formation of human rights was played by the authorities of individual states, and only the emergence of an international court for the protection of human rights increased the influence of international organizations and the treaties they issued on the protection of individual rights. The opportunity to make a complaint against the decisions of the public authorities of a country significantly increased the importance of international legal guarantees of human rights, including with regard to the legal protection of life. This was undoubtedly also connected with the evolution of the understanding of sovereignty. The jurisdictions of states, in fact, allowed the possibility of exercising control over the observance of rights guaranteed by international acts within the framework of the activities of international tribunals. Previously, the regulations of the Treaty on Minorities were criticised by some people in the interwar period as an expression of domination over the authorities of the newly created states⁵⁹. There was no political will to create mechanisms and institutions for the control of state power within the international human rights judiciary, including the protection of life. However, state authorities still had a significant stake in determining the content of human rights⁶⁰.

Accordingly, it seems that the substance of Article 2 of the Treaty on Minorities primarily influenced the editorial content of Article 95 of the March Constitution, while it is difficult to establish the consequences of this regulation in Polish legislation due to its general nature. The Polish authorities fulfilled their treaty obligation by already introducing into the domestic legal order the content of Article 95 of the March Constitution as enacted. On the contrary, it was not possible to assess the compliance of ordinary legislation with this provision in a way that would ensure effective protection of individual rights.

59 K. Kierski, *Liga Narodów a mniejszości w Polsce*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1929, no. 9 (4), p. 390.

60 P. Tacik, *Prawa człowieka czy prawa państwa? Filozoficzne refleksje nad podstawowymi dokumentami ONZ*, „Principia” 2012, LVI, p. 170.

It is noteworthy that the impact of acts of international law on the legal protection of life in the national order today occurs in a completely different dimension than in the interwar period. The current regulation in Article 38 of the 1997 Constitution also explicitly refers to international law, including the content of Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms⁶¹, but the influence of this legal act appears to be much more far-reaching than in the case of Article 2 of the Treaty on Minorities. The linguistic wording of human rights legislation is of secondary significance due to the internationalization of human rights regulation after World War II. Currently, one can see a trend of standardization of human rights due to the influence of international jurisprudence, and in Europe, especially the decisions of the European Court of Human Rights, which set a certain minimum standard of protection of life, which should apply in the legal order of each state party to the Convention⁶². This *acquis* is also referred to by the Polish Constitutional Tribunal. Thus, the relevance of international jurisprudence in the protection of life cannot be exaggerated. A Strasbourg judgement in a given case may result in the need to make legislative changes in national ordinary legislation, which shapes the pattern of life protection in all legal orders of the Council of Europe countries. It also happens that the European Court of Human Rights does not take a clear position on a case, recognizing in a given case the so-called margin of appreciation of the national legislator. The identical formulation of international human rights law takes on a nuanced normative content across jurisdictions⁶³. This confirms the significant position of national jurisdictions in this sensitive matter.

4. Systematics of legal regulation of the protection of life in the 1921 and 1997 Constitutions of the Republic

The position of the regulation in the structure of the legal text is not without jurisprudential relevance, as it can be useful in seeking to determine the normative substance of the legal provision being interpreted within the framework of the directives of systemic interpretation. The legislator, by foregrounding selected legal provisions, demonstrates the significance of a particular matter. It should be observed that the issue of human and civil rights was grouped in Chapter V of the March Constitution, so it was not a

⁶¹ Journal of Laws 1993 no. 61, item 284.

⁶² More: *Guide on Article 2 of the European Convention on Human Rights. Right to life*, https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf, (24.07.2022).

⁶³ J. Gerards, *Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights*, „Human Rights Law Review” 2018, no. 18, pp. 495-515.

particularly prominent place in the structure of the Basic Law. Earlier chapters focused on the constitutional principles and the system of state institutions. It turns out that such an internal arrangement of the constitutional matter is an expression of the special importance attached by the creators of the Constitution to the constitutional matters of the reborn Polish state. It is indicated that this is also the influence of Hegel's concept of the primacy of the state's interest over the individual⁶⁴.

The subject matter of the protection of life was grouped in Chapter V of the March Constitution, entitled "General civil rights and duties". It is significant that in the title and internal systematics of Chapter V duties, rather than rights and freedoms, were listed first, as was the case in Chapter II of the 1997 Constitution. The literature appraised this state of affairs in full. Michał Starzynski directly wrote that it is "right" to list duties first⁶⁵. It is necessary to support the position of a contemporary researcher, the late Michał Pietrzak, who showed that the main goal of the reborn state in 1918 was to assure appropriate conditions for the functioning of the state and the activity of individuals⁶⁶. It is also indicated that the legislature thus gave expression to a certain hierarchy, according to which only a citizen who fulfills his duties can enjoy and benefit from rights and freedoms⁶⁷. Undoubtedly, the layout of the matter adopted can be considered as the chosen philosophy of the concept of the state and the legal position of the individual.

In turn, the present regulation of the status of the individual in the state was placed in Chapter II of the 1997 Constitution just after the first Chapter I "The Republic" with the main principles of the political system of the Polish state. In the structure of Chapter II, we have separate sub-units grouping individual categories of constitutional rights and freedoms. The protection of life in Article 38 of the 1997 Constitution opens the regulation of personal freedoms and rights, which should also be considered an underscore of the importance of the protection of life, without which there can be no other constitutional rights and freedoms. This is also evident from the jurisprudence of the Constitutional Court, which stated that "the proclamation of the legal protection of life in

⁶⁴ J. Bucińska, *Spoleczne prawa człowieka w konstytucjach polskich*, „Roczniki Nauk Prawnych” 2003, vol. 1, p. 36.

⁶⁵ S. Starzynski, *Konstytucja państwa polskiego*, Lwów 1921, p. 47.

⁶⁶ M. Pietrzak, *Konstytucja z 17 marca 1921 r. z perspektywy 80 lat*, „Przegląd Sejmowy” 2001, no 2, p. 10.

⁶⁷ R. Stawicki, *Prawa i wolności obywatelskie w Polsce po 1918 r. w świetle rozwiązań konstytucyjnych – zarys historyczno-prawny*, [in:] *Prawa i wolności obywatelskie w Polsce po 1918 r. w świetle rozwiązań konstytucyjnych – zarys historyczno-prawny*. Biuro Analiz i Dokumentacji. Zespół Analiz i Opracowań Tematycznych Warszawa 2011, https://www.senat.gov.pl/gfx/senat/pl/sen_atopracowania/25/plik/ot-607.pdf, s. 4.

Article 38 of the Constitution, i.e., the first constitutional provision on personal freedoms and rights, testifies to the place of human life in the hierarchy of values protected by law and the necessity of its protection⁶⁸.

In contrast, Article 95 of the March Constitution deals with the protection of life only in part of its editorial layer. In this legal provision, the protection of other fundamental rights, such as property and freedom, is also included. It is noteworthy that the drafters of the 1997 Constitution used a different legislative technique, as the protection of freedom was primarily provided for in Article 31(1) of the Constitution, while the principle of protecting property was expressed in different legal provisions, in Articles 20 and 64 of the Constitution. In principle, no further legal consequences follow from this. Nonetheless, it seems that the isolation of the legal regulation of the protection of life to a separate editorial unit testifies to the recognition of this matter as particularly important, deserving a separate distinction in the structure of the legal text. In general, it should be concluded that the present Constitution comprises more internally elaborate editorial units, and there are many more of them in terms of number relative to the March Constitution. Quantitative, obviously, does not straightforwardly translate into the quality of legal regulation in this case. The 1997 Constitution features a general formulation of the protection of life, as did the March Constitution.

When investigating the importance of individual constitutional rights and freedoms, it is also necessary to take into consideration the possible recognition of a given right (freedom) as belonging to to a group of human rights that cannot be subjected to excessive restrictions under specific conditions of state functioning. These are so-called non-deregotiable rights, which cannot be restricted above the standard measure under conditions of ordinary functioning. Article 124 of the March Constitution exhaustively lists those rights and freedoms that could be subject to limitation of rights due to the need to protect “public security”, and among them the protection of life in Article 95 of the March Constitution is not indicated. Similarly, Article 233 of the 1997 Constitution was adopted, stating that the legal protection of life (Article 38 of the Constitution) could not be suspended under any of the three types of state of emergency. This is because Article 233(1) of the Constitution lists the legal protection of life within those rights and freedoms that cannot be suspended under a state of war and emergency, while Article 233(3) of the 1997 Constitution does not list the legal protection of life in the group of rights and freedoms that can be suspended under a state of disaster. So the legal protection of life in both constitutions has been granted a special safeguard in the event of the introduction of restrictions on

⁶⁸ Judgment of the Constitutional Tribunal of July 9, 2009, ref. SK 48/05, OTK-A 2009, no 7, item 108.

constitutional rights and freedoms during special periods of state functioning. An approach to evaluating the effectiveness of such legal solutions will be an issue of a different kind. Under a threat to the functioning of the state, the actual protection of life may be weakened primarily due to the need to take emergency measures in protecting the values at risk in connection with the introduction of a state of special functioning of the state.

5. The issue of determining the normative content of the legal protection of life in the Constitution of the Republic of 1921 and 1997 vs. the role of laws and judicial decisions

Both fundamental laws do not further elaborate on the scope of legal protection of life. In the legal literature of the interwar period, limited reference was made in the commentaries on the 1921 Constitution to the issue of the protection of life, as special emphasis was put on the issue of mutuality, as stipulated in the second sentence of Article 95 of the March Constitution⁶⁹. The content of Article 95 of the March Constitution was discussed in generalities without attention to the legal protection of life⁷⁰.

Commentators on the provision of Article 95 of the March Constitution at the time recognized that merely including a rich catalogue of constitutional rights and freedoms in the text of the Constitution was an insufficient effort, as it was necessary to take appropriate legislative action at the level of statutory laws. After the entry into power of the March Constitution, there were doubts about the realization of the objectives of the legislator. Stanisław Paciorewski asked – “However, if these future laws are to be enacted by another Diet, will they conform to the liberal principles and intentions of today’s lawmakers?”⁷¹. Despite this, the literature viewed the enacted state of law as positive, considering that it resulted in the safeguarding of the individual’s status in the state due to the impossibility of changing the norms of Chapter V of the March Constitution without a constitutional majority, as well as the requirement of a statutory legal basis for limiting or detailing these rights⁷². In the March Constitution, the very

⁶⁹ A. Paszkudzki, *Konstytucja Rzeczypospolitej Polskiej z dnia 17 marca 1921: z uwzględnieniem zmian ustalonych ustawą z dnia 2 sierpnia 1926, zmieniającą i uzupełniającą Konstytucję Rzeczypospolitej Polskiej z dnia 17 marca 1921*, Lwów – Warszawa 1927, pp. 119-120; W.L. Jaworski, *Prawa państwa polskiego, z. 2 A: Konstytucja z dnia 17 marca 1921. Prawo polityczne: od 2 października 1919 r. do 4 lipca 1921*, Kraków 1921, p. 663.

⁷⁰ E. Dubanowicz, *Konstytucja 17 marca 1921 r. Treść: wstęp, kronika prac konstytucyjnych, zasady konstytucji, zestawienie porównawcze, tekst ustawy, po uchwaleniu konstytucji, wielka chwila*, Warszawa 1921, p. 21.

⁷¹ S. Paciorewski, *Dwie konstytucje: Wielka i mała z 3-go Maja 1791 r. i z 17go Marca 1921 r. z dołączeniem tekstów obu konstytucyj*, Poznań 1922, p. 3.

⁷² Z. Cybichowski, *Polskie prawo państwowe na tle uwag z dziedziny nauki o państwie i porównawczego prawa państwowego*, vol. 1, Warszawa 1925, p. 142.

assurance of life protection was already an innovative solution, but it seems that today such a laconic constitutional regulation is not sufficient.

Granted, contrary to the regulation of Article 95 of the March Constitution, the manner in which the norm of Article 38 of the Constitution is implemented in laws can be reviewed by the Constitutional Court, but its judgments are based primarily on arguments from systematic and purposive interpretation. In addition, acceptance of constitutional settlements requires the assumption of compliance with the appropriate constitutional guarantees of the constitutional court's position, as well as a high level of public confidence in this institution. Many protests following the position of the Constitutional Court on October 20, 2020 reveal that these conditions are not fulfilled. Therefore, an adequate legal regulation of the limits of the protection of life should be expected already in the text of the Basic Law.

The system of law should comprise a coherent whole, which means that the regulation of a particular issue, including the protection of life, should be comprehensively regulated in the various legal acts, beginning with the Constitution and ending with lower-order acts. It is difficult to specify precisely the scope of the protection of life based on the substance of the March Constitution and the 1997 Constitution alone, due to the generalness of the legal provisions adopted. Most importantly, they did not define how the beginning and end of human life should be understood. As it was mentioned, such proposals were suggested in the preparation of the provision on the protection of life in the 1997 Constitution. Especially surprising is the fact that the definition of human life was made in Article 2 (1) of the Law of January 6, 2000 on the Ombudsman for Children⁷³, while Article 38 of the Constitution does not contain any norms on this issue. Thus, a situation occurs where an issue of such vital importance has been omitted by the Constitution, but has received regulation at the level of the statutory law. An attempt to amend Article 38 of the Constitution took place in 2006–2007 through the content: The Republic of Poland shall ensure to every human being the legal protection of life from the moment of conception⁷⁴. In the opinion of most experts, however, the amendment in question did not have an independent normative meaning and does not ensure the subjective right to life, it just only confirmed the existing legal status⁷⁵, although there

73 Consolidated text Journals of Law 2000, item 141.

74 Parliamentary print No. 993.

75 L. Bosek, *Opinia prawna odnosząca się do zmian w polskim ustawodawstwie zwykłym, które są niezbędne dla zapewnienia ochrony godności i podstawowych praw istoty ludzkiej w okresie prenatalnym w sferze zastosowań biologii i medycyny wyznaczanej przez standardy międzynarodowe*, [in:] *Konstytucyjna formuła ochrony życia*, eds. M. Królikowski, M. Bajor-Stachańczyk, W. Odrowąż-Sypniewski, Warszawa 2007, p. 56; R. Trzaskowski, *Opinia prawna na temat oceny cywilnoprawnych konsekwencji zmiany art. 38 Konstytucji RP*, [in:] *Konstytucyjna formuła...*, p. 34.

was also a contrary position⁷⁶. The current dispute over the scope of the protection of life, however, seems to point to the need to make the constitutional regulation more specific. It is worth considering regulating fundamental issues in the Constitution. The Constitution, as the most important social contract, can regulate this issue expressly, so as not to leave discretion to the ordinary legislature and the constitutional court.

Under of both the March Constitution and the 1997 Constitution, there is a succinct legal regulation of the legal protection of life, which makes ordinary legislation, judicial jurisprudence and legal doctrine particularly influential in this matter. Commentaries on Article 38 of the Constitution indicate that the content of the right to the protection of life includes taking appropriate measures at the level of lawmaking and law implementation to secure life⁷⁷. This should be agreed with, but it does not change the fact that many issues fundamental to the protection of life have been beyond the regulation of the Basic Law. This brings up the fundamental question of the meaning and function of the Constitution in guaranteeing this protection. The weight of this task is shifted to the activity of the ordinary legislature, on which the content of this protection will depend. It is commonly known how difficult it is to assess the constitutionality of statutory solutions through the prism of the general norms of the Constitution. Indeed, the openness of the text of the Constitution – as an advantage – should not lead to the obliteration of its constitutional meaning.

In this respect, it should be noticed that many variants of legal protection of life can be identified nowadays⁷⁸. One model precisely assumes the adoption of a general statement in the Constitution presupposing the protection of life⁷⁹. The second solution is based on the non-existence of legal regulation of this matter in the Basic Law and reference to international legal regulations and legislation of lower rank⁸⁰. And finally, it is admissible to regulate the issue of the protection of life in the Constitution only in relation to the prenatal stage⁸¹. The Polish legislature has opted for the first solution, but it is worth proposing the adoption of legal solutions combining the above approaches due to the conditions of acute legal and social dispute. The generality of the provisions of the 1997 Constitution on the legal protection of life is most often explained

⁷⁶ E. Zielińska, *Opinia prawna o poselskim projekcie zmiany (art. 38) Konstytucji Rzeczypospolitej Polskiej*, [in:] *Konstytucyjna formuła...*, p. 11.

⁷⁷ T. Sroka, *Commentary on art. 38 Konstytucji*, [in:] *Konstytucja RP. Tom I. Art. 1-86*, eds. M. Safjan, L. Bosek, Warszawa 2016, p. 945

⁷⁸ J. Lipski, P. Chybalski, *Analiza porównawcza dotycząca modeli zapisu konstytucyjnej gwarancji ochrony życia ludzkiego w perspektywie dopuszczalności usunięcia ciąży*, (in:) *Konstytucyjna formuła...*, p. 112 et seq.

⁷⁹ *Ibidem*, p. 113.

⁸⁰ *Ibidem*.

⁸¹ *Ibidem*.

by the difficulty of reaching a compromise⁸². Detailed issues concerning the protection of life were entrusted to the ordinary legislature due to the difficulty of reaching a consensus. At the same time, it should be stressed that the aforesaid state of affairs does not present a Polish specialty, since such a situation appears on the grounds of most constitutional systems⁸³.

However, leaving fundamental issues to the ordinary legislature makes the weight of determining the normative content of the provision of Article 38 of the Constitution fall on the ordinary legislature and, to a large degree, on the jurisprudence of the constitutional court, because of the lack of a precise constitutional pattern. Strasbourg jurisprudence will also be important. Simply defining the duty to protect life is already insufficient in view of the growing worldview disputes over the content and limits of the protection of life. It seems necessary to make an attempt to resolve at the constitutional level fundamental issues, such as the beginning of human life, the admissibility of euthanasia, or the termination of persistent therapy. The current challenge is becoming precisely to determine the limits of the protection of life. These issues are the challenge of recent decades, which is related to the development of medicine. These are challenges from which we will not escape. For this matter, the issue of guaranteeing the legal protection of life is becoming much more difficult to regulate than it was at the time of the enactment of the March Constitution. The difficulty of obtaining an adequate majority in the legislative process cannot justify legislative omission. In this regard, the widest possible range of society should be incorporated into the choice of an appropriate solution. In this context, it is worth it to consider holding a constitutional referendum to increase the legitimacy of the chosen approach to the issue.

In ascertaining the normative content of constitutional rights and freedoms, judicial jurisprudence is playing a special role. We should not in this regard the difference between the period of the March Constitution and the 1997 Constitution. Namely, in the judicature of the Supreme Court of 1921–1935, there were no cases of invoking Article 95 of the March Constitution in the legal protection of life, which indicates the lack of a practical role of this legal provision for the protection of life in the legal system⁸⁴. Only nine cases from the collection “Jurisprudence of Polish Courts” invoked Article 95 of the March Constitution, and none of these cases involved the protection of

⁸² M. Róžański, *Prawo do życia w Konstytucji Rzeczypospolitej Polskiej z 1997 roku*, „Polski Rocznik Praw Człowieka i Prawa Humanitarne” 2015, no. 6, p. 257-267.

⁸³ J. Lipski, P. Chybalski, *Informacja porównawcza dotycząca modeli zapisu konstytucyjnej gwarancji ochrony życia ludzkiego w perspektywie dopuszczalności usunięcia ciąży*, [in:] *Konstytucyjna formuła...*, Warszawa 2007, p. 78.

⁸⁴ R. Grabowski, *Ochrona życia...*, p. 100-101.

life⁸⁵. Accordingly, the position should be shared that this state of affairs was primarily due to the lack of issuance of statutory provisions that could detail the constitutional assumptions⁸⁶.

The relevance of judicial jurisprudence in cases of protection of life in relation to the current regulation of Article 38 of the 1997 Constitution is different, since compliance with this legal provision has been secured by the control of the constitutionality of the law, exercised by the Constitutional Court, which can assess whether the legislator has violated Article 38 of the Constitution. In this way, the constitutional court influences the formation of the normative content of the protection of life. It seems that it is the lack of precise regulation at the constitutional level that has significantly divided Polish society. Indeed, the generality of the regulation of Article 38 of the Constitution provides wide freedom for the legislator in regulating the protection of life, so in this case, the evaluation of the constitutionality of the law will be based on legal arguments. Hence, it is necessary to legislate the issue in question in greater detail, which may not be easy, but at least such an attempt should be made. The term negative legislator becomes particularly accurate with regard to the legal protection of life in connection with the annulment of one of the grounds for abortion. However, it seems that the prominence of the matter dictates that legal norms in the sphere of life protection should come from the representatives of the people, and not be the result of the elimination of statutory solutions deemed incompatible with the general provisions of the Constitution.

6. Conclusion

The 1921 Constitution did not have a significant role in securing the legal protection of life because of the lack of statutory provisions to specify the scope of such protection. The affirmative duties of the state in the field of human rights were not secured at the time by establishing an effective system of guarantees. The emphasis was mainly on the duties of the individual and the attitude of citizenship in the newly formed state. The safeguarding of life did not receive sufficient safeguards in ordinary legislation. The impossibility of challenging legislative actions with the allegation of violation of Article 95 of the March Constitution meant that the individual had no opportunity to challenge legal regulations in light of the benchmark of Article 95 of the March Constitution. For comparable reasons, the adoption of the obligations of the Treaty of Versailles on the protection of minorities was of limited significance. The influence of international human rights law on Chapter II of the 1997 Constitution can also

⁸⁵ Ibidem.

⁸⁶ Ibidem.

be seen today⁸⁷. However, it is not possible to point to a continuity of solutions in the tradition of the constitutionalization of the protection of life due to the history of Poland⁸⁸. Nevertheless, it is worth extracting lessons from the period of Article 95 of the March Constitution in the context of seeking answers to current questions about the meaning of ordinary legislation and constitutional judiciary.

On the other hand, under the 1997 Constitution, it is the Constitutional Court that has played a prominent role in determining the model for the protection of life, having recognized the validity of the principle of the protection of life on the basis of the amended Article 1 of the Constitution of the PRP even before the entry into force of the current Basic Law. However, it seems that the role of the constitutional court's jurisprudence needs to be balanced, in view of the increasing number of disputes about the content and limits of the protection of life, the constitutional regulation of the content of the legal protection of life should be made more specific. The settling of the most contested issues in the Basic Law, if the legislative process is successful, will contribute to securing certain values and their incarnation in detailed solutions in legislation. At the very least, it is worth attempting to enact such a regulation in the Constitution.

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⁸⁷ M. Masternak-Kubiak, *Odesłania do prawa międzynarodowego w Konstytucji RP*, Wrocław 2013, p. 56.

⁸⁸ A. Biszyga, *Wolności i prawa jednostki w stuletniej perspektywie polskiego konstytucjonalizmu*, „Przegląd Prawa Konstytucyjnego” 2021, no. 4, p. 167.

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SUMMARY

Legal Protection of Life in the Constitutions of the Republic of Poland of March 17, 1921 and April 2, 1997

The object of the article is to present the characteristics of the principle of legal protection of life from the Constitution of the Republic of 1921 and 1997. Particular attention is paid to indicating the importance of the Constitution in securing this protection and its impact on ordinary legislation. The source of constitutional rights and freedoms in the two constitutions is presented first. To establish the meaning of the legal protection of life, reference was made to the stage of legislative work and the internal structure of the constitutional text. The article outlines the evolution of the importance of international organizations, their legislation and the judiciary in ensuring the legal protection of life in the Polish legal system. Nowadays, international legal guarantees for the protection of life have provided the security of being able to complain to state authorities about violations of international norms for the legal protection of life. An analysis of the importance of judicial jurisprudence in the implementation of constitutional norms for the legal protection of life is presented. The considerations also take into account the impact of the absence of a constitutional judiciary in the Second Republic, as well as its existence in the political system in the Third Republic on the issue of ensuring legal protection of life. The conclusions lead to a proposal to clarify the regulation of Article 38 of the Constitution in order to realize to a greater extent the axiological function of the Constitution. The sole provision of legal protection of life in the Basic Law already appears to be insufficient.