

STATE SECURITY AND RESTRICTIONS ON CONSTITUTIONAL FREEDOMS AND HUMAN AND CIVIL RIGHTS

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Summary. The considerations in this article relate to the relationship between state security and the necessity of introduction restrictions on constitutional rights and freedoms of man and citizen. In order to present the multidimensionality of this relationship, the author first explained the concept of state security with regard to the meaning of constituent concepts, namely the concept of state and the notion of security. Subsequently, the analysis of constitutional provisions was carried out from the point of view of their relationship with the concept of state security and in the context of protection of constitutional freedoms and human and civil rights. The analysis has proven that in many cases the implementation of state security requires restrictions on constitutional freedoms and rights of man and citizens. These restrictions should respect the principle of proportionality.

Key words: the state, security, freedoms and human and civil rights, state security, the principle of proportionality

INTRODUCTION

In the 21st century, security is a term that is frequently applied in numerous contexts of meaning. Presumably the reason of that is increasing number and intensity of threats that cause increasing necessity for security.

The necessity of security concerns, in particular, the man who feels and perceives increasing number of threats in his environment, while simultaneously he notices decreasing tendency to trust in the society of risk. However, not only man as an individual requires security. The institutions, including the institution of the state, require security as well.

In this paper an attempt is made to clarify the concept of state security, taking into account the components of this concept. Subsequently, the analy-

sis of constitutional provisions will be carried out from the point of view of their relationship with the concept of state security and in the context of protection of constitutional freedoms and human and civil rights.

1. THE CONCEPT OF STATE SECURITY

When approaching the definition of the concept of state security, it is primarily necessary to explain the meaning of the individual components of this concept. To begin we should start with a brief explanation of the concept of a state. According to the dictionary definition, a state is a “politically organized community inhabiting the territory boundaries, having an independent form of government”¹. In specialist political literature, the most adequate and the most appropriate definition of a state inspired by the views of Georg Jellinek², is most often assumed, according to these views, as “lasting relationship of people permanently inhabiting a certain territory, subjected to supreme authority”³. In this definition, three elements of a state may be distinguished, namely population, territory and authority.

Turning to the definition of the concept of security, we should first refer to the dictionary definition, according to which security is “a state of non-threat, peace, certainty”⁴. Therefore, in the basic sense, safety is the opposite of the threat. However, it should be remembered that security is one of the sort of primitive concepts that we realize in an intuitive manner, which is difficult to define⁵.

¹ *Słownik języka polskiego*, vol. II, ed. M. Szymczak, Wydawnictwo Naukowe PWN, Warszawa 1994, p. 595.

² Jellinek defines a state as follows: “A state, as a legal concept, is ipso fact a corporation of settled people, equipped with direct, self-sovereign supremacy, or to use the now resubmitted term, equipped with direct, self-sustaining authority of the territorial corporation”, G. Jellinek, *Ogólna nauka o państwie*, Księga II I III, Księgarnia F. Hoesicka, Warszawa 1924, p. 50; see also J. Kostrubiec, *Próba współczesnej interpretacji klasycznej definicji państwa Georga Jellinka*, in: *Doktryny polityczne i prawne u progu XXI wieku*, eds. M. Maciejewski, M. Marszał, Kolonia Limited, Wrocław 2002, pp. 375–382; Idem, *Nauka o państwie w myśli Georga Jellinka*, Wydawnictwo UMCS, Lublin 2015.

³ B. Szmulik, M. Żmigrodzki, *Pojęcie, sposoby definiowania oraz cechy państwa*, in: *Wprowadzenie do nauki o państwie i polityce*, eds. B. Szmulik, M. Żmigrodzki, Wydawnictwo UMCS, Lublin 2006, p. 16.

⁴ *Słownik języka polskiego*, vol. I, ed. M. Szymczak, Wydawnictwo Naukowe PWN, Warszawa 1994, p. 147.

⁵ On the concept of security, see broader J. Potrzezszcz, *Bezpieczeństwo i porządek publiczny w ujęciu filozofii prawa*, in: *Bezpieczeństwo państwa. Zagadnienia podstawowe*, ed. W. Lis,

Explaining the meaning of the term ‘security’ we should refer to the etymology of the Latin term *securitas*, meaning peace of mind, safety, carelessness. *Securitas* noun derived from the adjective *securus*, which is a submission *se* (a preposition ‘without’, which means as a prefix *se* – offset, remoteness, lack of something), and *cura* (care, carefully, taking care of someone or something, but also fear, anxiety, worry about something) and meaning, among others, in a positive sense – carefree, calm, free from worries, taking place in peace, ensuring peace, protected from something; but also in a negative sense – too confident, careless, ruthless⁶.

In an attempt to explain the etymology of the Polish term ‘bezpieczeństwo’ we should refer to the word ‘piecza’ (‘custody’) meaning as much as “caring, caring about someone or something, solicitude”⁷. As explained by Alexander Brückner, “in the old language (orthodox church, old Czech and others) it used to be said «*piec się o czym*» (‘try’ and ‘strive’), hence *bezpieczny* and *niebezpieczeństwo* (‘safe’ and ‘danger’), and once, even, and in the 16th century *przezpieczny, przezpieczność*”⁸. In the opinion of Krzysztof Karolczak the term ‘bezpieczeństwo’ (‘security’) is the simple negation of the term of ‘danger’ or ‘threats’. Such an explanation is associated with the common understanding of security as a real state or subjective feeling of no external threat, enabling the attainment of one’s own goals⁹.

In the general social sense, security “includes the necessity of existence, survival, certainty, stability, integrity, identity, independence, protection of level and quality of life. Security being the supreme need of a human and social groups, is simultaneously a fundamental necessity of states and international systems; its absence causes anxiety and a sense of danger”¹⁰. Cur-

Wydawnictwo KUL, Lublin 2014, pp. 15–25; Eadem, *Bezpieczeństwo prawne z perspektywy filozofii prawa*, Wydawnictwo KUL, Lublin 2013, pp. 25–38.

⁶ Cf. *Słownik łacińsko-polski*, vol. V, ed. M. Plezia, ed. 2, Wydawnictwo Naukowe PWN, Warszawa 2007, pp. 83–84; cf. J. Potrzebny, *Bezpieczeństwo prawne z perspektywy filozofii prawa*, p. 26.

⁷ *Słownik języka polskiego*, vol. II, p. 648.

⁸ A. Brückner, *Słownik etymologiczny języka polskiego*, ed. 6, Wiedza Powszechna, Warszawa 1993, p. 406.

⁹ K. Karolczak, *Bezpieczeństwo jednostki i narodu – mrzonka czy realność w XXI wieku?*, in: *Bezpieczeństwo w XXI wieku. Asymetryczny świat*, eds. K. Liedel, P. Piasecka, T.R. Aleksandrowicz, Difin, Warszawa 2011, p. 15.

¹⁰ R. Zięba, *Pojęcie i istota bezpieczeństwa państwa w stosunkach międzynarodowych*, “Sprawy Międzynarodowe” 10 (1989), p. 50.

rently, three dimensions of security are indicated, namely: 1) individual dimension, 2) national (state) dimension, and 3) international dimension¹¹.

Security belongs to essentially disputable concepts, “which meaning cannot be definitively determined. You cannot deny this assertion some equity, since security for each means something a bit different, in the study of international relations, however, there is generally a consensus that by security one understands the state of control over what threatens particularly appreciated values”¹².

In the context of the aforementioned findings, in attempting to determine what state security is, one should take into consideration all the constituent elements of the state, namely population, territory, authority, and subsequently consider what sort of threats may arise in relation to each distinguished element. Undoubtedly, a diversity of possible threats influences the multidimensionality of the concept of state security.

Due to the source of the threat, a distinction is made between external and internal security¹³, namely it is claimed that “external security means no threat from other entities or external factors. Internal security is the stability and harmony of a given organism or entity, obtained as a result of the state’s fulfilment of an internal function implemented as part of a strategic national security policy manifested in the protection of the constitutional order, life and health of citizens and national property against unlawful activities, along with the consequences of natural and technical disasters”¹⁴.

The doctrine establishes that the concept of state security is not simply defined unambiguously. Therefore, the most general term is adopted, stating that security of a state is associated with such an absence of threats, owing to which the existence and development of a given state is possible¹⁵. State security is also referred to as “maintaining the desired socio-economic rela-

¹¹ W. Gizicki, *Bezpieczeństwo jako proces polityczno-społeczny*, in: *Społeczno-moralna potrzeba bezpieczeństwa i porządku publicznego*, eds. J. Świtka, M. Kuć, G. Gozdór, Towarzystwo Naukowe KUL, Lublin 2007, p. 19.

¹² P.D. Williams, *Badania bezpieczeństwa. Wprowadzenie*, in: *Studia bezpieczeństwa*, transl. N. Nowicki, Wydawnictwo UJ, Kraków 2012, p. 1.

¹³ W. Lis, *Bezpieczeństwo wewnętrzne i porządek publiczny jako sfera działania administracji publicznej*, Wydawnictwo KUL, Lublin 2015, p. 47.

¹⁴ *Bezpieczeństwo wewnętrzne RP w ujęciu systemowym i zadań administracji publicznej*, eds. B. Wiśniewski, S. Zalewski, Bielsko-Biała 2006, p. 14, excerpt from W. Lis, *Bezpieczeństwo wewnętrzne*, p. 47.

¹⁵ Cf. W.J. Wołpiuk, *Sily Zbrojne w regulacjach Konstytucji RP*, Scholar, Warszawa 1998, p. 47.

tions, the prevailing political system and the territory inhabited by the citizens of a given state”¹⁶. According to another definition, state security is “a state in which there no exist threats to the existence of the state and its democratic system. State security includes in its scope the directives of caring for its sovereignty, territorial integrity and defence potential, even when there no exists any threat from other states or terrorists”¹⁷. State security is also understood as “a state of conditions in which the state does not feel threatened by military or political or economic pressure and at the same time has conditions for its own development and progress”¹⁸.

Since threats can originate from outside a given country or may have their source within the state, there is a distinction between external security and internal security, in the sense of the state’s ability to protect its values against external or internal threats. Primarily, it is important to sustain the state existence, guarantee its territorial integrity, preserve political sovereignty and, above all, guarantee the biological existence of the population living in the territory of the state¹⁹.

Therefore, both the external security and internal security of the state are an integral element of the state’s security. The external security of the state is defined in the doctrine as “one of two aspects of state security, meaning the state of affairs, a set of different circumstances taking place in its environment (in an international environment), characterized by the absence of negative impacts from other entities, allowing the state for a stable and harmonious development (functioning); it is the state and process of securing

¹⁶ K. Fus, *Kierowanie bezpieczeństwem narodowym RP*, in: *Bezpieczeństwo w XXI wieku*, p. 42; see: J. Prońko, *Bezpieczeństwo państwa – zarys teorii problemu i zadań administracji publicznej*, Wydawnictwo WSA, Bielsko-Biała 2007, p. 20.

¹⁷ J. Karp, *Bezpieczeństwo państwa*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, eds. W. Skrzydło, S. Grabowska, R. Grabowski, Wolters Kluwer, Warszawa 2009, pp. 108–109.

¹⁸ M. Pawelczyk, *Publicznoprawne obowiązki przedsiębiorstw energetycznych jako instrument zapewnienia bezpieczeństwa energetycznego w Polsce*, Wydawnictwo Adam Marszałek, Toruń 2013, pp. 29–30.

¹⁹ Cf. L. Grosicki, *Zakres przedmiotowy bezpieczeństwa wewnętrznego państwa*, in: *Organizacja i kierowanie instytucjami bezpieczeństwa wewnętrznego państwa*, eds. K. Grosicka, L. Grosicki, P. Grosicki, Oficyna Wydawnicza ASPRA-JR, Pułtusk-Warszawa 2013, pp. 18–19; K. Dunaj, *Istota bezpieczeństwa państwa*, in: *Bezpieczeństwo państwa. Zagadnienia prawne i administracyjne*, eds. M. Czuryk, K. Dunaj, M. Karpiuk [et al.], Wydział Prawa i Administracji UWM, Olsztyn 2016, p. 21.

the values and interests of the state against negative external factors”²⁰. The state’s internal security is defined in the doctrine as “one of two aspects (sorts) of security, meaning the state of affairs, a set of various circumstances taking place in all areas of internal activity, characterized by stability and harmoniousness of its development (functioning), in other words – the state and process of securing the values and interests of the state against negative internal factors”²¹.

Summing up this part of the considerations, it should be emphasized that “the overall recognition of state security includes both internal aspects and external aspects of this security. Such a broad approach results from the fact that threats to the state may result from both the internal structure of the society living in a given country, as well as from the functioning and evolution of the international environment in which the country is functioning [...]. State security may and should be dealt with in a very broad subject or generic approach. Therefore, there are many specific types of state security, such as state political security, military security of the state, economic security (including, for instance, raw materials, food, etc.) of the state, state social security, state cultural security, ideological security of the state, ecological security of the state”²².

2. STATE SECURITY IN THE PROVISIONS OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

Numerous provisions of the Constitution of the Republic of Poland²³ refer to the concept of state security. However, this concept has not been defined by the legislator. Yet in Chapter I of the Constitution of the Republic of Poland, titled *Rzeczpospolita*, in art. 5 there is a norm according to which “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

²⁰ W. Kitler, *Bezpieczeństwo narodowe. Podstawowe kategorie, dylematy pojęciowe i próba systematyzacji*, Dom Wydawniczy Elipsa, Warszawa 2010, p. 26, excerpt. from K. Dunaj, *Is-tota bezpieczeństwa państwa*, p. 22.

²¹ *Ibidem*.

²² L. Bosek, M. Szydło, *Komentarz do art. 31*, in: *Konstytucja RP*, vol. I: *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Wydawnictwo C.H. Beck, Warszawa 2016, Legalis side note 96–97.

²³ *Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Dz. U. Nr 78, poz. 483 z późn. zm. [hereinafter called the Constitution of the Republic of Poland or the Constitution].

protection of the natural environment pursuant to the principles of sustainable development”.

According to the adopted assumption, the definitional elements of the state are population, territory, authority. Therefore, in the context of the concept of ‘state security’, all these elements should be the subject to protection. It finds its confirmation in the text of art. 5 of the Constitution. “In the broadly understood concept of the state security system, one may distinguish, among others, the following closely related subsystems: - political security (aims to protect the interests of the state with political methods), – military security (aims to provide defence in the event of armed conflict) – economic security (aims to protect Poland’s economic development), – security public (aims to ensure constitutional order, protection against crisis situations, environmental threats, ensure public order and protection against criminogenic phenomena), – social security (aims to provide basic conditions for a dignified existence of a citizen)”²⁴.

It is very important from the point of view of the subject taken in this study to establish the relationship between the security of the state and the security of citizens. In the latest commentary on art. 5 of the Constitution of the Republic of Poland, the subject of consideration is, *inter alia*, such a relation: “art. 5 of the Constitution formulates for the Polish state an important contemporary task of ensuring the security of its citizens. Thus the security is therefore guaranteed not to everyone, but only to those who share the citizenship with them. The security of citizens (articles 5 and 230 par. 1) cannot be equated with the notion of state security (art. 26 par. 1, art. 31 par. 3, art. 45 par. 2, art. 53 par. 5, art. 61 par. 3, art. 126 par. 2, articles 130, 135, 146 par. 7 and 8 of the Constitution), although, of course, both concepts are interrelated to some extent. If the security of the state is endangered, the security of its citizens is also endangered. However, it may happen that the security of citizens will be endangered, although the security of the state will not show such a threat. Hence, it should be assumed that, for instance, certain actions of other citizens, which are generally not directed against the state as such, may be a threat to the security of citizens. The state is therefore obliged to ensure citizens’ security also in their mutual relations. The necessity of providing the state with security may justify limiting the constitutional rights and freedoms of citizens, and the threat to citizens’ security is a premi-

²⁴ H. Zięba-Zalucka, *Konstytucyjne aspekty bezpieczeństwa*, “Studia Iuridica Lublinensia” 22 (2014), pp. 418–419.

se for introducing a state of emergency on the territory of a state or a part of it. It is also worth noting that art. 76 declares the protection of consumers, users and tenants against activities threatening their safety. It considers certain activities not only from state authorities, but also from private entities”²⁵. The aforementioned views are convincing and acceptable.

With reference to art. 5 of the Constitution, Dariusz Dudek, noted that “the protection of the independence of the state and the inviolability of its territory primarily affects the protection of its external security and peaceful existence in the international arena. This is confirmed by the later provision of art. 26 par. 1 of the Constitution, which defines the tasks of the Armed Forces of the Republic of Poland, serving to protect the independence of the state and the indivisibility of its territory, and to ensure the security and inviolability of its borders. In this provision, state security is directly related to the external sovereignty of the state and its territorial integrity, including the inviolability of state borders”²⁶.

In Chapter II of the Constitution, entitled *Freedoms, rights and obligations of man and citizen*, in art. 31 par. 3 state security is listed as one of the premises justifying limiting the constitutional rights and freedoms of man and citizen. This provision provides “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”.

Among the freedoms and personal rights, the Constitution norms, *inter alia*, the right to court and freedom of conscience and religion. In art. 45 par. 1 of the Constitution is expressed the right to a court, namely the right to “a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court”. In art. 45 par. 2, the possibility of excluding the hearing is provided, *inter alia*, due to national security.

In art. 53 par. 1 of the Constitution, the freedom of conscience and religion is normalized. Art 53 par. 5 of the Constitution establishes a norm concerning the restriction of freedom to manifest religion. According to this norm “the freedom to publicly express religion may be limited only by

²⁵ M. Florczak-Wątor, *Komentarz do art. 5*, w: *Konstytucja RP*, Legalis side note 33.

²⁶ D. Dudek, *Konstytucyjne podstawy ochrony bezpieczeństwa i porządku publicznego*, in: *Bezpieczeństwo państwa*, p. 37.

means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others”.

Among the freedoms and political rights, the Constitution regulates the right to public information. Namely art. 61 par. 1 provides “a citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury”. The scope of this right is defined in art. 61 par. 2 of the Constitution in the following manner “the right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings”. However, art. 61 par. 3 of the Constitution refers to the limitation of the right expressed in the first two paragraphs of art. 61 of the Constitution. Under this provision “limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State”.

In Chapter V of the Constitution entitled *the President of the Republic of Poland*, in art. 126 par. 2, the tasks of the President of the Republic of Poland were determined in the following manner: “The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory”. As emphasized in the doctrine, “standing guard over the internal security of the state lies primarily in preventing obstacles to its proper functioning, preventing the threat of destabilization of organizational structures of the state and dysfunctions in the operation of its organs. Standing guard over external security consists in counteracting external threats and undertaking actions for the defence of the state. Two groups of competences are specifically related to the analysed sphere of the tasks of the President of the Republic of Poland, namely competences performed by the President of the Republic of Poland as the Commander of the Polish Armed Forces and competences concerning extraordinary measures [...]. The President of the Republic of Poland implements this task in cooperation with the Council of Ministers, which is politically responsible for internal and external security [...]. This cooperation may have a non-decisive and informal form, it may take a formal dimension, for instance, consisting of convening the Cabinet

Council, it may finally take a form of exercising of competences reserved exclusively for the President of the Republic of Poland or performed with a countersignature. Standing up to state security is closely related to the inviolability and indivisibility of its territory. The President of the Republic of Poland should oppose any attempted transfers of the territory of the state and violations of art. 3 of the Constitution, expressing the principle of uniformity of the state. This provision requires the order to oppose attempts to form a federal state and to give a part of its territory a privileged status, taking the form of territorial autonomy”²⁷.

The security of the Polish state as one of the values to be guarded by the President of the Republic of Poland is also reflected in the swearing oath referred to in art. 130 of the Constitution. This provision provides: “The President of the Republic shall assume office upon taking the following oath in the presence of the National Assembly: «Assuming, by the will of the Nation, the office of President of the Republic of Poland, I do solemnly swear to be faithful to the provisions of the Constitution; I pledge that I shall steadfastly safeguard the dignity of the Nation, the independence and security of the State, and also that the good of the Homeland and the prosperity of its citizens shall forever remain my supreme obligation». The oath may also be taken with the additional sentence «So help me, God»”. According to art. 135 of the Constitution “The advisory organ to the President of the Republic regarding internal and external security of the State shall be the National Security Council”.

In Chapter VI of the Constitution, entitled *the Council of Ministers and government administration*, in art. 146 par. 4 among the competences of the Council of Ministers are listed: ensuring internal security of the state and public order (art. 146 par. 4 point 7), as well as ensuring the external security of the state (art. 146 par. 4 point 8).

From the point of view of the security of the state, the provisions of the Constitution included in Chapter XI entitled *Extraordinary measures* are of significant importance. In particular, art. 228 par. 1 provides that “in situations of particular danger, if ordinary constitutional measures are inadequate, any of the following appropriate extraordinary measures may be introduced: martial law, a state of emergency or a state of natural disaster”. In art. 229 of

²⁷ P. Tuleja, K. Kozłowski, *Komentarz do art. 126*, in: *Konstytucja RP*, vol. II: *Komentarz do art. 87–243*, eds. M. Safjan, L. Bosek, Wydawnictwo C.H. Beck, Warszawa 2016, Legalis side note 32.

the Constitution, the issue of the possibility of introducing martial law was normalized, namely “In the case of external threats to the State, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement, the President of the Republic may, on request of the Council of Ministers, declare a state of martial law in a part of or upon the whole territory of the State”. Art. 230 of the Constitution regulates the question of the possibility of introducing a state of emergency, namely “1. In the case of threats to the constitutional order of the State, to security of the citizenry or public order, the President of the Republic may, on request of the Council of Ministers, introduce for a definite period no longer than 90 days, a state of emergency in a part of or upon the whole territory of the State. 2. Extension of a state of emergency may be made once only for a period no longer than 60 days and with the consent of the Sejm”.

Special restrictions on freedoms and human rights may be introduced during extraordinary circumstances. However, the Constitution in art. 233 provides certain exclusions of these restrictions, namely “1. The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para .4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children). 2. Limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or property shall be prohibited. 3. The statute specifying the scope of limitations of the freedoms and rights of persons and citizens during states of natural disasters may limit the freedoms and rights specified in Article 22 (freedom of economic activity), Article 41, paras. 1, 3 and 5 (personal freedom), Article 50 (inviolability of the home), Article 52, para. 1 (freedom of movement and sojourn on the territory of the Republic of Poland), Article 59, para. 3 (the right to strike), Article 64 (the right of ownership), Article 65, para. 1 (freedom to work),

Article 66, para. 1 (the right to safe and hygienic conditions of work) as well as Article 66, para. 2 (the right to rest)²⁸.

3. STATE SECURITY AS A PREMISE TO LIMIT CONSTITUTIONAL RIGHTS AND FREEDOMS OF MAN AND CITIZEN

Aforementioned, in art. 31 par. 3 of the Constitution of the Republic of Poland, state security is mentioned as one of the premises justifying limiting the constitutional rights and freedoms of man and citizen. According to this provision, the restrictions on constitutional rights and freedoms of man and citizen may be imposed only by statute, and only when they are necessary in a democratic state for its safety. Art. 31 par. 3, regulates the security of a democratic state. Therefore, it is not a state apparatus that is opposed to citizens yet a “social group organized in a particular manner”²⁹.

From art. 31 par. 3 of the Constitution it follows that “the legislator allows restricting constitutional rights and freedoms to the protection of the broadly understood security of a «democratic» state, and thus to protect the security of the state based on democratic principles (values). With reference to art. 31 par. 3, therefore, it is possible to limit the constitutional rights and freedoms of individuals in order to relegate various threats to the Polish state, coming from within or from outside, and that may undermine its foundations or being as a democratic state”³⁰.

Due to the fact that the provisions of the Constitution of the Republic of Poland refer to external and internal security, “human rights restrictions on this basis may be established in the case of both external and internal threats”³¹.

Limitations of human rights and freedoms because of national security should be consistent with the principle of proportionality, having its founda-

²⁸ On the subject of the concept of state security in the Constitution of the Republic of Poland, see also B. Przywora, *Bezpieczeństwo państwa jako przesłanka dopuszczalności ograniczenia praw i wolności osób pełniących funkcje w służbie publicznej*, w: *Konstytucja Rzeczypospolitej Polskiej w pierwszych dekadach XXI wieku wobec wyzwań politycznych, gospodarczych, technologicznych i społecznych*, ed. S. Biernat, “Zagadnienia Sądownictwa Konstytucyjnego” 1(3) 2012, pp. 243–244.

²⁹ K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP*, Kantor Wydawniczy Zakamycze, Kraków 1999, p. 169.

³⁰ L. Bosek, M. Szydło, *Komentarz do art. 31*, Legalis side note 98.

³¹ K. Wojtyczek, *Granice ingerencji ustawodawczej*, pp. 183–184.

tion in art. 31 par. 3 of the Constitution. This principle is related to the prohibition of excessive interference in the sphere of human rights. According to the view of the Polish Constitutional Tribunal “the essence of the prohibition of excessive interference is the recognition that the legislator cannot impose restrictions exceeding a certain degree of nuisance, and in particular, disturbing the proportion between the degree of violation of the individual’s rights and the public interest, which is thus to be protected. [...] Considering whether this prohibition was violated by the legislator, should take into account the specificity of individual rights and freedoms of an individual (stricter evaluation standards should be applied, for instance, to regulation of personal and political rights and freedoms rather than economic or social rights), because this involves the general boundaries of permissible limitations. These considerations should therefore answer three questions: 1) whether the introduced legislative regulation is potential to lead to its intended effects; 2) whether this regulation is necessary to protect the public interest with which it is associated; 3) whether the effects of the introduced regulation are in proportion to the burdens imposed on the citizen by it”³².

CONCLUSION

The considerations carried out in this paper allow to draw a few conclusions. First of all, it should be emphasized that the relationship between state security and constitutional freedoms and human and citizen rights is complex. State security cannot be unequivocally oppose human security, and thus the safety of the population living in the territory of the state. The population consists an integral part of the concept of the state. Therefore, state security is unambiguous with the security of the population living in the territory of that state. Whereas, the right to security is the fundamental, natural right of every human being. Although in the Constitution of the Republic of Poland, it has not been explicitly expressed, however detailed regulations concerning freedoms and human and civil rights, in fact serve to implement the idea of human security, in particular the idea of legal security.

On the other hand, however, the implementation of state security in many cases requires the introduction of restrictions on constitutional rights and freedoms of man and citizen. The provisions of the Constitution refer to the-

³² Orzeczenie Trybunału Konstytucyjnego z dnia 26 kwietnia 1995 r., ref. act K 11/94, OTK 1995, part I, item 12.

se restrictions. However, such restrictions should meet the test of proportionality, and thus should not violate the constitutional principle of proportionality.

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BEZPIECZEŃSTWO PAŃSTWA A OGRANICZENIA KONSTYTUCYJNYCH WOLNOŚCI I PRAW CZŁOWIEKA I OBYWATELA

Streszczenie. Rozważania zawarte w niniejszym artykule dotyczą relacji pomiędzy bezpieczeństwem państwa a koniecznością wprowadzenia ograniczeń konstytucyjnych wolności i praw człowieka i obywatela. W celu ukazania wielowymiarowości tej relacji, autor najpierw wyjaśnił pojęcie bezpieczeństwa państwa z uwzględnieniem znaczenia pojęć składowych, a mianowicie pojęcia państwa i pojęcia bezpieczeństwa. Następnie została przeprowadzona analiza przepisów konstytucyjnych z punktu widzenia ich związku z pojęciem bezpieczeństwa państwa oraz w kontekście ochrony konstytucyjnych wolności i praw człowieka i oby-

watela. Analiza wykazała, że w wielu przypadkach realizacja bezpieczeństwa państwa wymaga wprowadzenia ograniczeń konstytucyjnych wolności i praw człowieka i obywatela. Ograniczenia te powinny respektować zasadę proporcjonalności.

Słowa kluczowe: państwo, bezpieczeństwo, wolności i prawa człowieka i obywatela, bezpieczeństwo państwa, zasada proporcjonalności