

CONSTITUTIONAL POSSIBILITIES OF LIMITING HUMAN AND CIVIL RIGHTS AND FREEDOMS – SELECTED ISSUES

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Abstract. In a democratic state governed by the rule of law, the limitation of constitutionally guaranteed freedoms and rights may take place as an exception to the general principle of the protection of freedoms. This article examines the constitutional rights and freedoms of human beings and citizens, and the possibility of limiting them, as outlined in the Constitution of the Republic of Poland of 1997. Given the unprecedented circumstances of the COVID-19 pandemic, the discussion extends to the solutions adopted in Poland during this period, with an attempt to assess the constitutionality of these regulations.

Keywords: constitution; human and civil rights and freedoms; state of emergency.

INTRODUCTION

The rights and freedoms of human and citizen constitute the foundation of a democratic society, reflecting its values, norms and principles. However, in any constitutional system, there are situations where it may be necessary to restrict these rights for the benefit of the general public or to protect essential public interests. Adopted on 2 April 1997, The Constitution of the Republic of Poland contains a catalogue of basic freedoms, rights and duties of human and citizen.¹ They are written in Chapter II, right after the main principles of the political system. This clearly proves how important the rights and obligations imposed on the citizen are, and how important it is to fulfil them. In the Polish legal doctrine, it is claimed that freedom is a primal, immanent feature that a person acquires at the moment of birth. This means that a human being can decide their own fate, make such choices as they consider appropriate and undertake acts of power that seem to be most beneficial to them [Kazimierzczuk 2014, 101].

¹ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

The Constitution of the Republic of Poland, in Article 31(1), permits any limitation upon the exercise of constitutional freedoms and rights to 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 others. Such limitations shall not violate the essence of freedoms and rights. This article aims to explore the constitutional rights and freedoms of human and citizen and the potential for their limitation, as per the Constitution of the Republic of Poland of 1997. It further examines the solutions implemented in Poland during the COVID-19 pandemic, with an attempt to assess the constitutionality of these regulations. The research method used in this work is a dogmatic and legal method, involving the analysis of applicable legal provisions and current views presented in doctrine and jurisprudence.

1. RIGHTS AND FREEDOMS OF HUMAN AND CITIZEN IN THE LIGHT OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

The essence of man's rights is to protect the dignity and freedom of the individual. Freedoms and rights form a "shield" protecting the dignity of every human being. Human dignity is a source of freedom and rights for the individual, it is also a basic principle of law. It combines constitutional freedoms and individual rights, at the same time constituting one of the foundations of a democratic state of law, ensuring protection against objectification for every person [Chmaj 2002, 85]. As P. Tuleja points out, "Human dignity is the source and basis of the catalogue of constitutional freedoms and rights. The Constitution does not directly resolve the dispute about the positivistic or natural law nature of man's rights. By pointing to the inherent nature of dignity and assuming that it is the source of man's rights, the Constitution, however, determines their suppositive basis. The content of freedoms and rights does not depend solely on the will of the constitution-maker and the legislator. The Constitution does not so much confer or grant dignity and the fundamental freedoms and rights related to it, but rather declares their protection" [Tuleja 2023].

Pursuant to Article 30 of the Constitution of the Republic of Poland, the inherent and inalienable dignity of the human shall constitute a source of freedoms and rights of men and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities. Human dignity is the source and basis of the catalogue of constitutional freedoms and rights. The Constitutional Tribunal assumes that the prohibition of violating dignity is absolute and applies to everyone, while the obligation

to respect and protect dignity has been imposed on the public authorities of the state.²

Human freedom, i.e. the ability to freely decide for each person, is subject to legal protection. This means that freedom is a state to be protected by law, which is the task of public authorities. Therefore, the legislator is obliged to establish regulations that will prevent violations of freedom and create sanctions in the event of violation of freedom and will restore the lawful state [Wojtyczek 2001, 206]. The positive aspect of “individual freedom” consists in the fact that the individual is free to shape their behaviour in a given sphere, choosing the forms of activity that suit them best or refrain from undertaking any activity. The negative aspect of “individual freedom” consists in the legal obligation to refrain – anyone – from interfering in the sphere reserved for the individual. Such an obligation is incumbent on the state and other entities.³

Pursuant to Article 5 of the Constitution of the Republic of Poland, the Republic of Poland protects the independence and integrity of its territory, ensures the freedoms and rights of men and citizens, the safety of the citizens, protects the national heritage and ensures environmental protection, guided by the principles of sustainable development. The Constitution comprehends rights and freedoms in a holistic way, regulating both rights and freedoms of a personal and political nature, as well as rights and freedoms of an economic, social and cultural nature, and finally, the obligations of the individual towards the state [Garlicki 2006, 58].

As the Constitutional Tribunal stated in its judgment of 30 July 2014, “the legislator establishes the privacy of an individual, not as a constitutionally conferred subjective right, but as a freedom constitutionally protected with all the resulting consequences. First of all, it means the freedom of individuals to act within the framework of freedom up to the limits established by law. Only an unambiguous statutory regulation may impose restrictions on specific behaviours falling within the scope of a specific freedom. It is unacceptable to presume the competence of public authorities in the field of interference with individual freedom. [...] This standard applies to all constitutional freedoms of man.”⁴

The Constitution covers rights and freedoms in a comprehensive manner, regulating both rights and freedoms of a personal and political nature, as well as rights and freedoms of an economic, social and cultural nature

² Judgment of the Constitutional Tribunal of 24 February 2010, ref. no. K 6/09, OTK-A 2010.

³ Judgment of the Constitutional Tribunal of 18 February 2004, ref. no. P 21/02, OTK ZU No. 2/A/2004.

⁴ Judgment of the Constitutional Tribunal of 30 July 2014, ref. no. K 23/11, OTK ZU No. 7/A/2014, item 80.

and the obligations of the individual towards the state. The catalogue of freedoms and rights is contained in particular in Chapter II of the Constitution of the Republic of Poland, which guarantees, among others: the right to life (Article 38); inviolability and personal freedom (Article 41); right to a court (Article 45); the right to protection of privacy (Article 47); parental rights (Article 48); freedom of movement (Article 52); freedom of speech (Article 54); freedom of assembly (Article 57); the right to strike (Article 59); equal access to public service (Article 60); freedom to choose and practice a profession and place of work (Article 65); the right to safe and hygienic work conditions (Article 66); health care (Article 68) or the right to education (Article 70).

2. CONSTITUTIONAL POSSIBILITIES OF LIMITING THE RIGHTS AND FREEDOMS OF HUMAN AND CITIZEN

The Constitution of the Republic of Poland in Article 31(3) allows for the possibility of restrictions on the exercise of constitutional freedoms and rights, which may be established only by statute and only when they are necessary in a democratic state for its security or public order or for the protection of the environment, public health and morals, or freedom and the rights of others. This is confirmed in the judgments of the Constitutional Tribunal, stating that “the dependence of constitutional restrictions on freedoms and rights on statutory provisions should be referred to two issues. Firstly, it is a reminder of the so-called principle of exclusivity of the act for regulating the legal status of an individual in a state, which is the implementation of the idea of a state operating on the basis and within the limits of the law (legal state). Secondly, it formulates the requirement for appropriate details of the statutory regulation. This means that the act should independently determine all the basic elements of the limitations of a given freedom so that on the basis of reading the provisions of the Act, it is possible to determine the specific scope of this limitation. It is unacceptable to adopt blanket regulations in the Act, leaving the executive authorities the freedom to regulate the final shape of these limitations, and in particular to determine their scope.”⁵

Each limitation of rights and freedoms must, therefore, be assessed in terms of its necessity, whether the same objective could not have been achieved by other means, less burdensome for the citizen and less interfering with the sphere of his freedoms and rights. However, the constitutional legislator did not define how to understand the concept of the essence

⁵ Judgment of the Constitutional Tribunal of 12 January 2000, ref. no. P 11/98, OTK ZU No. 1/2000, item 3; judgment of the Constitutional Tribunal of 6 October 2009, ref. no. EN 46/07.

of freedoms and rights. The prohibition of violating the essence of freedoms and rights has been extended by the Constitutional Tribunal's jurisprudence to the principle of proportionality. It has been interpreted by the Court from the principle of a democratic state governed by the rule of law and contains a general directive so that the legislator's interference with the freedom or right of the individual should not be too great but appropriate to the situation. The Constitutional Tribunal, assessing whether a given limitation is proportional, conducts a three-point proportionality test, which consists in stating: 1) whether the controlled legal provision will lead to the achievement of the goal intended by the legislator, i.e. whether it will protect at least one of the values referred to in Article 31(3) of the Constitution (condition of suitability); 2) whether the controlled provision of law is the least burdensome possible means to achieve the goal set by the legislator (condition of necessity); 3) whether the good (constitutional value) lost as a result of the limitation of freedom or fundamental right remains in proportion to the good (constitutional value) achieved by the controlled provision (proportionality in the *strict sense*).⁶

Proportionality is a limitation clause, the nature of which results from the properties of the legal principles that determine the content of individual freedoms and rights. The principle of proportionality applies when assessing state interference in freedom or human rights. In a situation where the violation of human rights consists in abandoning or omitting their protection, then, according to P. Tuleja, one can refer to the so-called reverse proportion, which is used to determine whether the order to protect constitutional rights is implemented to the extent required by the Constitutions [Tuleja 2019, 117].

Limitation of human rights and freedoms is also possible in the event of the introduction of emergency states regulated in Article 228-234 of the Constitution of the Republic of Poland. The term "state of emergency" in a democratic state means a legal regime introduced in the event of a specific threat, the removal of which is possible only by means of exceptional measures. This regime is primarily characterised by the limitation (suspension) of certain rights and freedoms of the individual. There may also be a transfer of competences between public authorities or granting them special powers to remove the threat [Prokop 2005, 9].

It should be emphasised that the introduction of a state of emergency is a sovereign right of every state. The Constitution of the Republic of Poland

⁶ Judgments of the Constitutional Tribunal: of 29 June 2001, ref. no. K 23/00 OTK ZU No. 5/2001, item 124; of 17 May 2006, ref. no. K 33/05 OTK ZU-A 2005, No. 5, item 57; of 13 March 2007, ref. no. K 8/07, OTK ZU No. 3/A/2007, item 26; of 22 March 2017 SK 13/14, OTK ZU A/2017, item 19.

in Chapter XI provides for three states of emergency: natural disaster, exceptional and war. The catalogue of constitutional states of emergency is closed, which is tantamount to the prohibition of establishing by statute other states of emergency than those listed in Article 228(1).⁷ A state of emergency can only be introduced if ordinary constitutional measures are insufficient, and in addition, each of these states can be introduced after additional conditions have been met. At the same time, it is very important that these restrictions must not violate the essence of freedoms and rights. They should, therefore, continue to be implemented, despite their narrowing, in the spirit of the values behind their introduction. In doing so, it is necessary that the restrictions introduced comply with the above-mentioned principle of proportionality. Pursuant to Article 228(2) of the Constitution, a state of emergency may be introduced only by regulation and which shall be additionally made public. Analysis of the Article 228 of the Constitution of the Republic of Poland suggests that all states of emergency should be characterised by the following principles: uniqueness, legality, proportionality, expediency, protection of the foundations of the legal system and protection of representative bodies [Prokop 2005, 17]. It should be emphasised that these rules apply to all states of emergency, regardless of their territorial scope and duration.

Pursuant to Article 228(3) of the Constitution of the Republic of Poland, the principles of operation of public authorities and the scope to which human and citizen freedoms and rights may be limited during individual states of emergency are specified by law.⁸ It should be emphasised that the possibility of introducing them depends on the source of the threat, which requires extraordinary solutions. In the case of martial law, it is a matter of threat to an external state, armed attack on the country or joint defence resulting from allied obligations (Article. 229), in the event of an internal emergency threat to the system of the country, public order or the security of its citizens (Constitution, Article 230(1)), and in the case of a natural disaster, the occurrence of natural disasters or technical failures, and specifically the prevention or removal of their effects (Constitution, Article 232).

⁷ It should be added that Article 116 of the Constitution (in Chapter IV, entitled “Sejm and Senate”) adds a state of war. The state of war was not accidentally regulated separately, which means that the constitutional legislator did not intend to classify it as a state of emergency. The state of war refers only to the international relations of the Republic of Poland and does not, in principle, cause direct changes in domestic law.

⁸ Act of 29 August 2002 on Martial Law and the Competences of the Commander-in-Chief of the Armed Forces and the Rules of his Subordination to the Constitutional Authorities of the Republic of Poland, Journal of Laws 2002, item 2091; Act of 21 June 2002 on the state of emergency, Journal of Laws of 2002, item 1928; Act of 18 April 2002 on the state of a natural disaster, Journal of Laws of 2002, item 1897.

As noted by M. Brzeziński, the introduction of states of emergency affects, among others, the freedoms and rights of human and citizen in a radically different way from the restrictions applied in the conditions of ordinary threats, i.e. everyday and crisis threats [Brzeziński 2014, 171]. However, there are also rights that cannot be limited due to the state of emergency. When imposing martial law and a state of emergency, the scope of these limitations must not reduce freedoms and rights such as: human dignity, protection of life, humanitarian treatment, free access to court, freedom of conscience, religious freedom, and there must be no discrimination manifested in the lack of legal possibilities to introduce any limitations on grounds of race, gender, language, faith or lack of it, social origin, ancestry or property (Constitution, Article 233(1-2)). In the event of a natural disaster, the Constitution in Article 233(3) contains a positive clause, indicating the rights that may be subject to limitations by law, including the freedom to economic activity, personal freedom, inviolability of the home, freedom of movement and sojourn on the territory of the Republic of Poland, the right to strike, the right of ownership, freedom to work, the right to safe and hygienic conditions of work. This means that the legislator cannot limit any other rights and freedoms guaranteed in the Constitution.

3. LIMITATIONS ON HUMAN RIGHTS AND FREEDOMS ADOPTED BY THE POLISH LEGISLATOR IN THE ERA OF THE COVID-19 PANDEMIC

Due to the outbreak of the SARS-CoV-2 virus, the situation of many people has changed radically, as widespread and far-reaching restrictions have been introduced that affect the entire society, both in the sphere of official affairs, business transactions and everyday life. In Poland, first, a state of epidemic threat was announced, and then a state of epidemic.⁹ The legislator did not decide to take advantage of the introduction of a state of emergency. However, the legislator decided to use Article 46 of the Act of 5 December 2008 on prevention and combating infections and infectious diseases in humans, according to which in the event of a state of epidemiological emergency or state of the epidemic, the competent authority may,

⁹ The Regulation of the Minister of Health of 13 March 2020 regarding the announcement of the state of epidemic threat in the territory of the Republic of Poland (Journal of Laws item 433, as amended) and of 20 March 2020 on the cancellation of the state of epidemic emergency in the territory of the Republic of Poland (Journal of Laws, item 490) and of 20 March 2020 on the declaration of the state of the epidemic in the territory of the Republic of Poland (Journal of Laws of 2022, item 340), which was cancelled by the Regulation of 12 May 2022 on the cancellation of the state of epidemic in the territory of the Republic of Poland (Journal of Laws, item 1027).

by way of regulation, enter the sphere of civil rights and freedoms in a very broad manner. Therefore, it was decided to temporarily limit certain types of movement, introduce a ban on organising shows and other gatherings of the population, temporarily limit the functioning of certain institutions or workplaces, or introduce an obligation to carry out protective vaccinations.¹⁰ The Act was amended by the Act of 2 March 2020 on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and emergencies caused by them,¹¹ which added to the Act, among others, Article 46a authorising the Council of Ministers to issue a regulation specifying the area in which a state of epidemiological threat or epidemic occurs and to introduce solutions by means of which such a state is to be combated. According to P. Tuleja, during the pandemic, all constitutional conditions for issuing a regulation on the introduction of a state of natural disaster occurred [Tuleja 2020, 13]. In addition, as E. Kurzępa notes, the solutions introduced during the pandemic are “typical of the state of emergency, and the purpose of such a legislative procedure was to circumvent the provisions regarding a state of natural disaster. These solutions have been permanently included in the Act, the regulations of which are not limited only to counteracting the SARS-CoV-2 epidemic, so it is difficult to determine in which situations they will be used in the future” [Kurzępa 2021, 5-21]. In turn, according to M. Pietras-Eichberger, the COVID Act was the basis for the adoption of many implementing acts that created a special legal infrastructure for the time of the pandemic, but their time and substantive scope also apply to issues not related to the pandemic. In this way, there was a kind of “blurring” of the provisions of the Constitution regulating states of emergency [Pietras-Eichberger 2021, 334].

Due to the spread of the SARS-Cov-2 virus, the government pursuant to Article 46a and Article 46b points 1-6 and 8-12 of the Act on the Prevention and Control of Infectious Diseases in Humans introduced a number of restrictions that grossly violated the basic rights of the individual, such as: quarantine and isolation, ban on movement, organisation of events, cultural events and gatherings, including religious ones, use of public infrastructure, service, commercial and leisure activities, closure of enterprises and schools, restriction of international traffic (closure of borders). It is worth mentioning that all these restrictions were introduced by way of regulation and not by statutes, as provided for in Article 31(3) of the Constitution of the Republic of Poland, as well as the lack of use of solutions regarding the constitutional state of emergency. It should be emphasised that the Constitution

¹⁰ Journal of Laws 2023, item 1284.

¹¹ Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, Journal of Laws item 374.

allows for the possibility of limiting the basic rights and freedoms of the individual in states of epidemic emergency, however, these restrictions should be made in the Act, and at the same time, they should not violate the essence of constitutional rights and must be necessary and proportionate. Due to the pandemic, positions and views have emerged that many restrictions introduced in connection with this disease had no statutory basis and are, therefore, unconstitutional. According to R. Piotrowski, “an example of ignoring the Constitution was, in particular, the manner of [...] introducing an extra-constitutional state of emergency through statutory solutions regarding combating the epidemic” [Piotrowski 2022, 351]. However, in the opinion of P. Tuleja, the pandemic period “can be described as a hybrid state of emergency. The conditions for introducing a state of natural disaster are met, the Council of Ministers is obliged to issue a regulation introducing this state and announce it, but it does not fulfil this obligation. Therefore, there was no formal introduction of a state of natural disaster in accordance with Article 228(2) of the Constitution. There was a state of permanent violation of the Constitution” [Tuleja 2020, 10]. Z. Czarnik is of the opposite opinion “[...] the postulates demanding the introduction of one of the states of emergency: emergency or natural disaster are incomprehensible. Since the constitutional legislator itself provided for a different way of protecting rights and freedoms in combating the epidemic, and a different way for emergency situations regulated in Article 228 of the Constitution of the Republic of Poland. If this is the case, then it should be assumed that this is a rational choice” [Czarnik 2021, 24].

The legislator’s actions consisting in introducing restrictions on constitutionally protected human rights and freedoms – on the basis of subordinate acts – became the subject of criticism and actions taken by the Ombudsman and the Helsinki Foundation for Human Rights, as they were perceived as violating the standard derived from Article 31(3) of the Constitution. According to the Ombudsman, the regulations were prepared in a hurry without a sufficient assessment of their compliance with the Constitution of the Republic of Poland. They were amended many times and at an extraordinary pace to eliminate numerous mistakes that should have been avoided with a properly conducted legislative process.¹² On the other hand, the Helsinki Foundation for Human Rights in the prepared report, pointed out the disadvantages of the legislative solutions adopted by the government during the pandemic, recognising that the scope and nature of the announced

¹² The Ombudsman’s speech to the Prime Minister of 23.03.2020, VII.565.461.2020, <https://bip.brpo.gov.pl/pl/content/raport-rpo-dla-premiera-nt-prawa-w-stanie-epidemii> [accessed: 10.03.2024].

restrictions exceeded the statutory authorisation and were not admissible in the ordinary state.¹³

It is hard to disagree with the opinions of the representatives of the doctrine that a number of civil rights and freedoms – including constitutionally protected ones – have been limited on the basis of dozens of regulations issued by the government. The errors of regulation were also pointed out by the courts, which confirmed in their judgments the violation of the Constitution of the Republic of Poland when imposing restrictions on the freedoms and rights of the individual related to the epidemic [Czarnow 2023, 110]. As well as pecuniary penalties imposed administratively, they have become the subject of many court cases. Administrative courts waived these penalties and questioned their constitutionality and thus refused to allow the imposition of an administrative sanction for non-compliance with them, among others, restrictions on the freedom of assembly, an order for a specific manner of movement (an order to maintain a certain distance from other persons), an obligation of border quarantine or a ban on doing business [Kolendowska-Matejczuk and Mrowicki 2021, 45-50; Czarnow 2023, 111].¹⁴

CONCLUSION

Human freedom, i.e. the ability to freely decide for each person, is subject to legal protection. The legislator is obliged to establish regulations that will prevent violations of freedom and create sanctions in the event of a violation of freedom, and will allow the restoration of the state in accordance with the law. The Constitution of the Republic of Poland allows for the possibility of limiting the exercise of constitutional freedoms and rights, which can only be established by law and only if they are necessary in a democratic state. Limitation of human rights and freedoms is also possible in the event of the introduction of emergency states regulated in the Constitution. Without the introduction of the state of emergency, the authorities can only operate within the framework of ordinary constitutional limitation clauses appropriate for situations in which there are no specific threats.

¹³ *Prawa człowieka w dobie pandemii. 10 miesięcy, 10 praw, 10 ograniczeń, 10 rekomendacji na przyszłość*. Raport Helsińskiej Fundacji Praw Człowieka, 2021, <https://hfhr.pl/publikacje/prawa-czlowieka-w-dobie-pandemii> [accessed: 10.03.2024], p. 72.

¹⁴ Examples of judgments: Provincial Administrative Court in Gdańsk of 28 January 2021, ref. no. III SA/Gd 780/20; Supreme Administrative Court of 28 October 2021, ref. no. II GKS 1417/21; Supreme Administrative Court of 23 September 2021, ref. no. II GSK 802/21 II GSK 844/21; Supreme Administrative Court of 12 October 2021, ref. no. II GSK 1245/21; Supreme Administrative Court of 8 September 2021, ref. no. II GSK 1010/21; Supreme Administrative Court of 19 October 2021, ref. no. II GSK 1137/21; Supreme Administrative Court of 28 June 2022, ref. no. II GSK 292/21.

During the fight against the COVID-19 epidemic, significant interventions in the sphere of freedoms and human rights were made, as well as significant changes in the functioning of public authorities. The legal regulations and activities of the state apparatus existing at that time largely corresponded to the constitutional characteristics of the state of emergency, although it was not formally announced. The actions of the state authority in Poland have, in fact, led to the introduction of an intermediate state between the state of emergency and the ordinary functioning of the state, although the Constitution of the Republic of Poland does not provide for this.

For 40 years – since 1981 – politicians have avoided introducing emergency states in Poland. For the first time since the adoption of the Constitution of the Republic of Poland, a state of emergency was introduced on 2 September 2021 in the border zone with Belarus, i.e. in part of the Podlaskie and Lubelskie voivodeships. The belt covered 115 towns in the Podlaskie Voivodeship and 68 towns in the Lublin Voivodeship.¹⁵ The government requested the introduction of a state of emergency for a period of 30 days in connection with the so-called migration crisis on the border with Belarus. The state of emergency was then extended for another 60 days, i.e. until 2 December 2021, by the President's Regulation of October 1, 2021,¹⁶ issued with the consent of the Sejm, expressed on 30 September 2021.¹⁷ As of 3 December 2021, the state of emergency was lifted. According to S. Trociuk, "The state of emergency introduced at the border with Belarus significantly limited the use of constitutional freedoms and rights in the area covered by it. Some of these restrictions, in particular the introduction by the Council of Ministers of a general ban on staying in the area covered by the state of emergency and the related ban on entry for the press, as well as the ban on providing public information, raise doubts as to the correctness of their establishment. They go beyond the limits of permissible restrictions set out in the provisions of the President's Regulation" [Trociuk 2021]. As confirmed by the judgment of the Supreme Court of 18 January 2022, which indicated that the Regulation of the Council of Ministers of 2 September 2021, to the extent that it introduces an unlimited prohibition of staying in the area covered by the state of emergency, while not providing for the possibility of journalists staying in this area in connection with the exercise of their profession, exceeds the scope of the statutory delegation on which it was

¹⁵ Regulation of the President of the Republic of Poland of 2 September 2021 on the introduction of a state of emergency in the area of part of the Podlaskie Voivodeship and part of the Lublin Voivodeship, *Journal of Laws*, item 1612.

¹⁶ Regulation of the President of the Republic of Poland of 1 October 2021 on the extension of the state of emergency introduced in the area of part of the Podlaskie Voivodeship and part of the Lublin Voivodeship, *Journal of Laws*, item 1788.

¹⁷ Resolution of the Sejm of the Republic of Poland of 30 September 2021 on consent to the extension of the state of emergency, *Journal of Laws*, item 1787.

based, and does not comply with the principle of proportionality specified in Article 228(5) of the Constitution of the Republic of Poland.¹⁸ To sum up, it should be stated that ensuring respect for the rights and freedoms of human and citizen should be a priority for every democratic state of law, while the reality of the functioning of the state in connection with the COVID-19 pandemic, as well as the introduction of a state of emergency in the immediate vicinity of the eastern border of the state, have caused constitutional doubts.

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¹⁸ Judgment of the Supreme Court of 18 January 2022, ref. no. I KK 171/21, OSNK 2022/2/7.

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