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LIABILITY FOR FAILURE TO ENSURE SECURITY IN CIVIL LAW

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Abstract. Pursuant to Article 5 of the Constitution of the Republic of Poland, the Polish State is obliged, among other things, to safeguard security for its citizens. Therefore, the public authorities are required to undertake actions aimed at keeping the state of non-threat, allowing the citizens to pursue their interests. A question arises about the effect of failure to perform these obligations. This paper seeks to assess the effect of failure to safeguard security in the civil-law sphere. In particular, the paper discusses the concept of security, delineates the circle of entities burdened with security obligations and indicates the legal regime and conditions for liability for damages for failure to safeguard security. The article also provides an analysis of admissibility of approaching the sense of security as a personal right.

Keywords: civil liability; security; damage; compensation; State Treasury; local government unit; sense of security; personal rights.

1. INITIAL REMARKS

Security issues are now of particular interest to scholars representing various fields and disciplines, including legal sciences. This article discusses civil liability for failure to ensure security. The considerations addressed herein aim, in particular, at determining whether or not the failure to provide security may constitute a factor determining the emergence of civil law liability (compensatory liability) and who, and according to what rules, is to be held liable.

The main research assumption is that failure to provide security may cause damage to legally protected rights and interests of various legal entities, and if these are considered as behaviour constituting a violation of the rules of conduct resulting from the provisions of generally applicable law, it becomes justified to demand compensation for the resulting damage within the framework of a civil-law relationship. In order to verify the above thesis, it is necessary to conduct research in several partial areas. The first concept that needs to be clarified (for civil liability purposes) is security. Next, it is necessary to identify the group of entities who are responsible for ensuring security. Then it is necessary to list the conditions of civil

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liability for failure to ensure security, paying particular attention to the event entailing the liability. In addition, it is worth considering the permissibility of recognizing sense of security as a personal right.

2. CONCEPT OF SECURITY

Security is a concept within legal language. This concept is used by the Constitution of the Republic of Poland[1] (see Article 5, 126 and 135) and other legislation. It should however be noted that the concept of security was not defined in these provisions [Karpiuk 2019, 4]. As a general understanding, security appears to be a condition characterised by the absence of threat [Szykuła-Piec 2021, 325]. This notion of security refers to its Latin origin *sine cura* (*securitas*), translated as a state of tranquillity, certainty and lack of threats [Rosicki 2010, 23].

Social sciences scholars (in particular in the fields of security sciences, political and administrative sciences, legal sciences and sociological sciences) are making numerous steps to define the concept of security [Babiński 2020, 93; Osierda 2014, 90]. When explaining this concept, it is emphasised that it is a certain state of non-threat to society members, determined by external factors [Gromek 2018, 156], which gives members of society (and, seemingly, organisational units formed by them) the possibility of continued existence and pursuit of their interests [Rosicki 2010, 24] (also of a property nature) [Pieprzny 2012, 14-45].

The literature classifies security, taking into account numerous and varied criteria [Rosicki 2010, 29; Gromek 2018, 164]. Namely, the application of the subjective criterion allow distinguishing state (national) security and international security. The objective criterion involves spheres of relationships in which the state of non-threat is sought after. This criterion distinguishes between environmental, energy, economic, ideological, cultural, political, humanitarian, military, social, biological, epidemiological, atomic and space security. The spatial criterion, on the other hand, distinguishes global, regional and local security. Finally, taking into account the dynamics of processes related to the state of non-threat makes it possible to determine stages in implementing security postulates (the process criterion).

The way security is approached and systematised is evidently determined to a large extent (in particular in the subjective and objective perspectives) by identified risk factors and their sources. These factors are dynamic, and their evolution is a consequence of the changing sense of threat perceived by individuals and groups. This, in turn, results in that more and more

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

numerous areas of public life are assessed in the context of security (see in particular the comprehensive catalogue of objective criteria of security).

This may bring forth a question about the reasonability of invoking the above mentioned definitions and classification of security in the context of civil liability. This issue cannot be explained without first providing general characteristics of civil liability. Civil liability is one of varieties of liability as such, understood as an obligation to bear the consequences of occurrence of negatively qualified events [Kaliński 2023, 36]. A distinction can be made here between moral, political or legal liability and, as part of the latter, criminal, official (employee's), disciplinary or civil liability. Compared to other varieties of liability (especially legal liability), civil liability is distinguished by its basic function. The fundamental purpose of criminal, official or disciplinary liability is to identify and punish those behaving in an undesirable manner and to have a preventive effect on third parties of refraining from similar behaviour in the future. Civil liability, on the other hand, is not aimed at imposing a penalty on the person responsible for the event, but at redressing the damage suffered by a specific entity in connection with the causative event [Czachórski, Brzozowski, Safjan, et al 2009, 86-87]. Civil liability can therefore be regarded as compensatory liability which seeks to remedy the damage resulting from a specific event for which the entity is liable (however, it should be noted here that the literature also adopts a broader understanding of civil liability as the fulfilment of obligations arising from different legal titles, including in particular the obligation to remedy the damage) [Kaliński 2023, 17; Idem 2016, 68-69]. Its emergence depends on the fulfilment of the conditions established under the provisions of the Civil Code, namely the occurrence of damage (see Article 361(2) of the Civil Code), the occurrence of an event with which the law links the liability of the entity in question (see, in particular, Article 415 et seq. of the Civil Code, Article 471 et seq. of the Civil Code) and the occurrence of an adequate causal link between the damage and the causal event (see Article 361(1) of the Civil Code) [Kaliński 2023, 38].

Civil liability (compensatory liability) for failure to ensure security will therefore be reduced to compensating the damage suffered by the injured party as a result of the unlawful conduct of the entity that is obliged to ensure security. In this context, two issues become important. Firstly, the damage caused to legally protected rights or interests of the injured party must be a consequence of the lack of security. It seems, however, that the kind of security (among the aforementioned) is of secondary importance. The occurrence of damage may be a consequence of insufficient security in the social, political, welfare, environmental and epidemiological spheres in various territorial perspectives (national, regional, local). Thus, it can be concluded that civil liability is related to failure to ensure security in general terms

[Gromek 2018, 172, 162, 169] (understood as a certain state of non-threat, the provision and maintenance of which is the responsibility of normatively specified entities). The second important issue is to identify the entity that is encumbered with security obligations. Most definitions of security do not focus on this issue (see the introductory remarks). But it is of fundamental importance for civil liability for failure to ensure security. It is impossible to compensate for the damage without first pointing out who is responsible for it. *Prima facie*, civil liability for failure to ensure security should be imposed upon entities encumbered with security obligations; it is therefore necessary to identify such entities.

3. ENTITY OBLIGED TO ENSURE SECURITY

The first guidelines regarding the entity responsible for providing security are contained in the norms of the Polish Constitution. Namely, Article 5 the Constitution provides that the Republic of Poland shall ensure, apart from the freedoms and rights of persons and citizens, also the security of its citizens. Security is therefore one of the fundamental values protected by the State [Szykuła-Piec 2021, 325]. Detailed issues related to the implementation of State's responsibilities related to ensuring and protecting security are regulated in further constitutional provisions. Namely, according to Article 126 of the Constitution, the President of the Republic of Poland safeguards the sovereignty and security of the state and the inviolability and integrity of its territory, and its advisory body in the field of internal and external security of the State is the National Security Council (Article 135 of the Constitution). In turn, Article 146(4) of the Constitution includes, among the specific tasks of the Council of Ministers, ensuring the internal security of the state and public order (para. 7) and ensuring external security of the State (para. 8).

These responsibilities were specified in more detail in statutory provisions. The Council of Ministers and local bodies of central government administration (provincial governors [*wojewodowie*]) were assigned crisis management tasks (see Article 7 and 14 of the Act on emergency management of 26 April 2007[2]). Specific tasks in the field of State security have been entrusted to the Internal Security Agency (in the field of internal security – Article 1, Article 5 of the Act on the Internal Security Agency and the Intelligence Agency of 24 May 2002,[3] see also Article 3 of the Act on anti-terrorist activities of 10 June 2016[4]) and to the Intelligence Agency (in the field of exter-

[2] Act of 26 April 2007 on crisis management, Journal of Laws of 2023, item 122.

[3] Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency, Journal of Laws of 2024, item 812.

[4] Act of 10 June 2016 on anti-terrorist activities, Journal of Laws of 2024, item 92.

nal security), the Police, etc. In view of these examples of regulations, it can be concluded that the security obligations are incumbent upon the State and that their implementation is the domain of state bodies and institutions.

The provision of security is also referred to in the laws governing the system of local government. According to Article 7(1)(14) of the Act on municipal government of 8 March 1990[5], the municipality's own tasks include meeting the needs of the municipal community in terms of public order and security of citizens and fire and flood protection. In turn, the provisions of the Act on district government of 5 June 1998[6] impose public tasks of a supra-municipal nature on the district (*powiat*) in the field of public order and security of citizens (Article 4(1)(15)) and flood protection, including equipping and maintaining the district flood storage facility, fire prevention and the prevention of other extraordinary threats to human life and health and the environment (Article 4(1)(16)). Local government bodies are also competent in matters of crisis management (Article 17-18 of the Act on emergency management of 26 April 2007[7]).

4. MODE OF LIABILITY

Civil (compensatory) liability can be exercised in several modes (types), and the criterion for distinguishing different types of compensatory liability is the event that is the source of the damage. In the traditional approach, a distinction is made between contractual liability (for non-performance or improper performance of an obligation, arising between entities that have already been linked by a legal relationship of the obligatory type), tort liability (arising in connection with the infliction of damage outside the legal relationship) and contractual liability (which boils down to the redress of damage by the entity that has assumed such an obligation under a contract) [Czachórski, Brzozowski, Safjan, et al. 2009, 85-86; Kaliński 2023, 27-31; Idem 2016, 70-72]. Those responsible for providing security do not have a legal relationship of a contractual type with potential victims that includes security obligations. This means that the damages related to the failure to provide security will be redressed under the tort mode (Article 415 et seq. of the Civil Code).

The findings made above (see para. 3) as to the entities burdened with security obligations (which may potentially be liable to compensate for the damage caused by the failure to provide security) is conducive to recourse to the Civil Code provisions on liability for damage caused by the exercise of public authority. This is about Articles 417 to 417[2] of the Civil Code.

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[5] Act of 8 March 1990 on municipal self-government, Journal of Laws of 2024, item 1465.

[6] Act of 5 June 1998 on district self-government, Journal of Laws of 2024, item 107.

[7] Act of 26 April 2007 on crisis management, Journal of Laws of 2023, item 122.

The aforementioned provisions on liability for damage caused by the exercise of public authority attribute the obligation to compensate for the damage to the State Treasury, a local government unit or an entity that exercises public authority by the operation of law. The general provision of Article 417 of the Civil Code provides for liability for the damage caused by an unlawful act or omission in the exercise of public authority. The subsequent article (Article 417^1 of the Civil Code) refers to specific forms of unlawful exercise of public authority (the issuance of a normative act – see para. 1 and failure to do so – see para. 4, issuance of an unlawful final ruling or administrative decision – see para. 2 and the failure to issue them – see para. 3). Article 417^2 of the Civil Code provides for, by way of exception, liability for personal injury caused by the lawful exercise of public authority, subjecting its attribution to considerations of equity.

The prerequisites for the liability referred to in the aforementioned provisions are (as in any case of compensatory liability) the occurrence of the damage, the occurrence of the event indicated in these provisions and the adequate causal link between the damage and the event [Kaliński 2016, 69; Czachórski, Brzozowski, Safjan, et al. 2009, 211, 241].

5. EVENT TO THE OCCURRENCE OF WHICH THE EMERGENCE OF LIABILITY IS RELATED

When analysing civil liability due to failure to ensure security, we should consider at least two types of circumstances as the event giving rise to such liability. Firstly, account must be taken of inactivity of entities obliged to ensure security (see para. 3), which boils down to a breach of the rules of conduct in the field of general security, set out in legal provisions, resulting in events that occur in specific subjective and objective circumstances, causing damage to property or a person, in particular bodily injury, health disorder, deprivation of liberty (resulting in property and non-property consequences). Secondly, we can consider treating as a causative event (determining the occurrence of civil liability) the behaviour consisting in the failure to take into account systemic guidelines, generally formulated in normative acts of a systemic and organisational nature. It seems that such omissions may result in negative experiences that could potentially affect anyone. Specific facts in the first group of situations could include, for example, incorrectly securing a mass event or public gathering, failure to dissolve a public gathering, failure to intervene by the competent services (police, fire brigades, etc.). As regards the second category of situations, these could include e.g. failure to develop or implement general assumptions, strategies in the field of public security (e.g. formulated in the "National Security

Strategy of the Republic of Poland",[8] "Poland's Energy Policy until 2040"[9]). This distinction appears to be relevant for determining whether the failure to ensure safety may give rise to an obligation to remedy the damage.

The admissibility to hold liable those obliged to provide security under Article 417 et seq. of the Civil Code depends on the qualification of the above-mentioned causal events as manifestations of unlawful conduct in the exercise of public authority; taking into account, of course, the two types of events indicated above. Two considerations are worth noting at this point.

In the first place, it is necessary to consider, in the light of Article 417 of the Civil Code, how the exercise of public authority is to be approached. The interpretation of this statutory phrase raises some doubts in civil law literature [Bagińska 2006, 243; Banaszczyk 2012, 105-106]. It is beyond dispute, however, that the exercise of public authority includes undertaking measures falling within the sphere of *imperium*, which consist in shaping the legal position of individuals in a sovereign manner, subject to the application of State coercion to safeguard their implementation. Such behaviour is characterised by binding decisions in individual cases (final rulings, final administrative decisions), generally applicable rules (see Article 417^1 of the Civil Code) and purely factual activities undertaken by people involved in the structure of public authorities (police, fire brigade, etc.) [Bagińska 2006, 243, 251; Banaszczyk 2012, 105].

The subject of some controversy is (or perhaps rather was) the qualification as the exercise of public authority of behaviours of central government or local government entities that do not have the nature of a sovereign shaping of the situation of individuals, but fall within the sphere of organisational activities related to public tasks [Machnikowski 2024]. The literature on the subject presents, as examples of such activities, the organisation of the health care system, the education system; the organisation of the social welfare system, and the pension insurance system [Bagińska 2006, 249, 276, 303-304; Banaszczyk 2012, 108, 113].

Another issue that raises interpretive doubts related to the event entailing civil liability under Article 417 of the Civil Code is unlawfulness of the causative event [Machnikowski 2024]. The Civil Code uses such wording only in the context of liability for damage resulting from the exercise of official authority. However, it is common in the Civil Code to link sanctions with conduct referred to as "unlawful" (see Article 24, Article 43^{10}, Article 87, and Article 423 of the Civil Code), unlawful conduct being considered to

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[8] National Security Strategy of the Republic of Poland, https://www.bbn.gov.pl/ftp/dokumenty/Strategia_Bezpieczenstwa_Narodowego_RP_2020.pdf [accessed: 31.10.2024].

[9] Announcement of the Minister of Climate and Environment of 2 March 2021 on the state's energy policy until 2040, "Monitor Polski" of 2021, item 264.

be both the behaviours contrary to the regulations and those that contradict the model of obligatory behaviour reconstructed based on indications from extra-legal normative systems (principles of social coexistence, socio-economic purpose of the right) [Pietrzykowski 2004, 168]. The question therefore arises as to whether illegality referred to in Article 417 of the Civil Code has designata that are identical [Bagińska 2006, 315, 321] or narrower than "unlawfulness" referred to in other above-mentioned regulations (civil-law unlawfulness).

One should support the view that the concepts of "illegality" (within the meaning of Article 417 of the Civil Code) and "unlawfulness" are not identical [Banaszczyk 2012, 115, 127; Czachórski, Brzozowski, Safjan, et al. 2009, 244; Safjan 2004, 39-40; Radwański 2004, 973; Pietrzykowski 2004, 179]. This assessment is supported first of all by linguistic arguments. The terminological convergence of the wording of Article 417 et seq. of the Civil Code and in Article 77(1) of the Constitution should not be ignored. The constitutional concept of "illegality" has been given a narrow meaning in the case-law of the Constitutional Tribunal,[10] which boils down to incompatibility with the norms of law reconstructed on the basis of generally applicable provisions that fit in the constitutional catalogue of sources of law (Article 87 of the Constitution). It should also be borne in mind that the causative event referred to in Article 417 of the Civil Code, although may give rise (if there are other conditions for compensatory liability) to a civil-law relationship, occurs outside the civil-law relationship [Sobolewski 2024]. Therefore, the causative behaviour should not be assessed by confrontation with a model of conduct reconstructed according to the rules typical of civil law, i.e. with reference to the principles of social coexistence, socio-economic purpose of the right or good practices. This is so because it takes place within a relationship governed by rules of public law. The correctness of conduct should be assessed in terms of its compliance with generally applicable law. Consideration of extra-legal assessment criteria can only take place if the relevant references to general clauses are provided for by the (public-law) provisions governing the exercise of official authority [Safjan 2004, 40; Banaszczyk 2012, 123].

These findings (concerning the two issues outlined at the outset) influence the assessment of whether failure to ensure security may constitute a prerequisite for liability under Article 417 of the Civil Code. At this point it is advisable to return to the distinction made at the outset between two categories of situations (causal events). As regards the former, there is no doubt that they can be prerequisites for compensatory liability. This refers to the actual behaviour of specialised law enforcement services, or those whose statutory responsibility is to protect citizens (the Police, Forest Guard, Railway

[10] Judgment of the Polish Constitutional Tribunal of 4 December 2001, ref. no. SK 18/00, OTK 2001 No. 8, item 256.

Protection Service) or other behaviour of entities exercising public authority (e.g. failure to issue a decision to prohibit or dissolve a public assembly – see Article 14, 20 of the Law on public gatherings of 24 July 2015[11]) Any possible failures to act are a manifestation of the (non-)exercise of sovereign powers. There is also no doubt that such behaviour is contrary to the provisions of generally applicable law. As regards the second category of situations, the issue is more complex. These events may be counted as a manifestation of failure to exercise public authority in the organisational sphere [Banaszczyk 2012, 107]. While the very admissibility to hold somebody liable for omission under Article 417 of the Civil Code is not disputed [Bagińska 2006, 215; Safjan 2004, 24], doubts are raised by the issue of the non-compliance of such omissions with the provisions of generally applicable law.

Failure by a public authority to take certain actions is contrary to law if it violates a legally defined obligation [Safjan 2004, 24; Machnikowski 2024]. The legal norm must therefore provide for a specific obligation of designated behaviour addressed to a designated addressee.[12] Moreover, taking such an action is expected by other legal entities, and failure to do so results in a damage [Safjan 2004, 24; Machnikowski 2024]. This means that the omission is linked to the damage by an adequate causal link, in such a way that failure to perform a given specific obligation, due to its normal consequences, causes damage. As an example, under Article 7 of the Act on municipal government, it is assumed that the non-performance of duties in the field of public order and security of citizens cannot constitute grounds for the unlawfulness of the omission in question. Non-compliance, on the other hand, may relate to the failure of the relevant specialised service to take a specific action (in the case of municipalities, this may be the Municipal Police), examples of which are presented above.[13]

Legal norms reconstructed through interpretation of the rules pointed out in para. 3 above may be referred to as systemic and organisational. They assign the obligation to ensure security to specific public authorities and define the organisational framework for its implementation. They do not list specific activities to be performed by the entities that were assigned the general obligation to ensure security. Nor can specific duties be derived from the "National Security Strategy of the Republic of Poland" (which takes into account the context of Poland's presence in the North Atlantic Alliance and the European Union).[14] Indeed, it is clear even from the introduction to the Strategy that its provisions should be further developed

[11] Act of 24 April 2015, the Law on assembly, Journal of Laws of 2022, item 1389.

[12] Judgment of the Supreme Court of 8 May 2014, ref. no. V CSK 349/13, Legalis no. 1061024.

[13] Judgment of the Supreme Court of 8 April 2005, ref. no. III CK 367/04, Legalis no. 69535.

[14] See https://www.bbn.gov.pl/ftp/dokumenty/Strategia_Bezpieczenstwa_Narodowego_RP_2020.pdf [accessed: 20.08.2024].

and reflected in national strategic documents in the field of national security and development of Poland. The guidelines on energy sector security provided for in the "Energy policy of Poland by 2040",[15] and in the acts replaced by it, in particular the strategy "Energy Security and Environment – The perspective by 2020"[16] should be assessed in a similar way.

The above considerations lead to the conclusion that it is inadmissible to seek compensation under Article 417 of the Civil Code for damage resulting from failure to ensure security in general terms (unlike the damage caused by the breach of specific orders to ensure security).

6. FAILURE TO ENSURE SECURITY AND PROTECTION OF PERSONAL RIGHTS

It has been argued in the foregoing discussion that the failure to provide security (in the second perspective mentioned in para. 5) causes psychological discomfort, undermining the sense of security. The sense of security is defined in literature as a state in which a person feels calm and is free from the feeling of being endangered [Bieńkowski 2017, 180; Gromek 2021, 39; Jancz 2016, 136; Lewicka-Zelent 2019, 263-64; Łabędź 2018, 46; Marciniak 2009, 58]. It includes the sense of being informed (a person has knowledge of institutions responsible for security and practical knowledge about ensuring security on a daily basis), of stability (a person perceives the surrounding reality as relatively stable and predictable), belonging to a social community (a person receives emotional, material and social support from the community), and of agency (one is convinced of their own competence, abilities and effectiveness of one's actions) [Marciniak 2009, 60]. Maintaining the sense of security is important for meeting one of the most basic human needs – the need for security [Maslow 2009, 116], which in particular boils down to freedom from fear and insecurity [Łabędź 2018, 46].

Failure to satisfy the need for security results in a negative psychological experience – insecurity – which, from the civil-law perspective, can be considered as a personal injury. In this context, it appears appropriate to consider the admissibility of the classification of failure to ensure security by the persons responsible for it, resulting in a negative psychological experience (lack of the sense of security) as an event giving rise to protective claims in the context of the protection of personal rights.[17]

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[15] Announcement of the Minister of Climate and Environment of 2 March 2021 on the state energy policy until 2040, "Monitor Polski" of 2021, item 264.

[16] Resolution No. 58 of the Council of Ministers of 15 April 2014 on the adoption of the Strategy "Energy Security and Environment – perspective until 2020", "Monitor Polski" of 2014, item 469.

[17] Judgment of the Supreme Court of 21 April 2010, ref. no. V CSK 352/09, Legalis no. 381612.

It is possible to compensate for damage under the personal rights protection regime is possible in the event of at least an unlawful (in civil-law terms – see remarks in para. 5) violation of a personal right. A violation of a personal right occurs if a particular person suffers negative psychological experiences as a result of interference in axiological values related to the human person (personal rights). The provision of Article 23 of the Civil Code lists personal rights, and that list is not enumerative. Therefore, other values which show traits typical of personal rights in general may also be considered to be personal rights. These features include: close relationship with its holder (a natural person, a legal person, a so-called entity with limited legal capacity), non-property character (they refer to the non-property sphere of individual values of the world of feelings and the state of mental life inherently related to humanity), objective character[18] [Pazdan 2012, 1233-234; Szpunar 1979, 106-107; Sadomski 2024].

The following are considered (more or less widely) as non-Code personal rights: privacy (and personal data as an element thereof), the Internet user name (login), sense of attachment to particular gender (sexual integrity), voice (recognisable sound "image"), family ties, the emotional bond with the child, the name of an artistic ensemble, the family tradition seen as heritage (legacy) which boils down to identification with the achievements and values represented by the ancestors.[19] On the other hand, the attribute of personal right is not given to e.g. creditworthiness,[20] postponement of the possibility to move into a newly built house,[21] the possibility to drive a car,[22] the right to uninterrupted use of electricity[23] and the right to visit the debtor's place of residence.[24] When considering the issue of non-Code personal rights, it must be noted that whether a certain state of affairs relating to a person is a personal right is determined by the attribution of value (a highly valued state of affairs) by general public and not by the qualification of it as such a right by legal practice. The legislature and judicature identify existing personal rights but do not create them. In this context, a doubt appears whether the sense of security is a personal right or not.

The sense of security meets the criteria of the first two features of values identified as personal rights (close ties to the individual, non-property character)

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18 Judgment of the Supreme Court of 28 February 2003, ref. no. V CK 308/02, Legalis no. 58520.

19 Ibid.

20 Judgment of the Court of Appeal in Warsaw of 18 September 2019, ref. no. VI ACa 254/18, Legalis no. 2267135.

21 Judgment of the Court of Appeal in Poznań of 24 January 2019, ref. no. I ACa 574/18, Legalis no. 2108534.

22 Judgment of the Supreme Court of 23 February 2022, ref. no. II CSKP 232/22, Legalis no. 2698172.

23 Decision of the Supreme Court of 17 November 2021, ref. no. II CSK 64/21, Legalis no. 2642511.

24 Judgment of the Court of Appeal in Warsaw of 11 October 2021, ref. no. V ACa 501/21, Legalis no. 2631309.

[Puchała 2017, 29-30; Sadomski 2024; Bidziński and Serda, 1986; Grzybowski 1957, 17-18]. Personal rights are vested in every person regardless of their individual ability to experience and feel. However, it must be kept in mind that an objective approach to personal rights presupposes a uniform measure of rights for all. Therefore, personal rights according to this approach are values generally assessed in this way in the social perspective. Values of special importance only for a specifically designated person are not personal rights. Otherwise, just the mere feeling of any discomfort by the person concerned would mean that there was a violation of a personal right. The assessment of whether there has been a violation of personal rights should take place according to an objective social response [Bidziński and Serda 1986, 8, 64; Zielonacki 1986, 209]. The covering of a certain value by protection typical of personal rights cannot take place where the demand for protection is a result merely of oversensitivity or excessive self-image of the person seeking protection.

The feeling known as the sense of security is highly subjective. While security itself, understood as a state consisting of the absence of threats, can be assessed using objective measures, the perception of this state by individuals has a purely subjective dimension [Jancz 2016, 134]. A person concerned perceives and interprets particular events as endangering his or her security individually, depending on personal and situational factors [Marciniak 2009, 61]. That person's feelings do not need to be reflected in objective reality. This may make an individual sense of threat inadequate to the actual situation [Lewicka-Zelent 2019, 264]. This is often linked to the development of the sense of threat by mechanisms of social influence (information provided by politicians, media, etc.) in order to pursue the interests of certain groups (e.g. political ones) [Bieńkowski 2017, 183; Gromek 2018, 39].

Moreover, it seems difficult to clearly identify an individualised source of concern. The source of distress in a designated person may be different circumstances, both those which may affect more people (war, pandemic, climate change, etc.) and those only related to a specific entity (job loss, family situation, illness). It cannot be also ruled out that a lack of the sense of security would be caused by the simultaneous occurrence of several of the aforementioned circumstances.

These findings lead to the conclusion that the sense of security, although being a state not economically conditioned, inherently linked to the human individual and its basic needs, cannot be considered as a personal right. This is hindered by the highly subjective nature of this state and the factors determining it. The possibility of seeking redress for breach of the sense of security through the procedure applicable to the protection of personal rights is therefore excluded. However, it cannot be ruled out that the sense of security may be regarded as a "component" in the context of other personal rights,

e.g. inviolability of the home (along with the right to rest, domestic peace and privacy).[25]

CONCLUSIONS

Security is considered to be a state of absence of threat from external factors, the persistence of which enables particular entities to exist undisturbed and to pursue their non-property and property interests. According to the constitutional rules, the provision of security is one of the fundamental responsibilities of the State. Statutory provisions set out the rules for the performance of this task in more detail.

Failure to perform the tasks related to ensuring security may result in a detriment to legally protected rights and interests of individual legal entities. These damages are compensated for under the tort liability regime, and (due to the scope of entities encumbered with security obligations) the provisions of the Civil Code concerning liability for damages arising in the exercise of public authority apply (Article 417 et seq. of the Civil Code). When analysing the liability of the State Treasury or local government units for damage related to the failure to ensure security, it should be pointed out that there are two types of groups of cases. The first group includes omissions (inactivity) in the field of security, the expression of which is the occurrence of damage or injury to a specific person. They take the form of, for example, incorrectly securing a mass event or public gathering, failure to dissolve a public gathering, failure to intervene by the competent services (police, fire brigade, etc.) and are directly related to the unlawful violation of specific obligations imposed on a specific entity obliged to act for security. The second group, on the other hand, covers failure to ensure security in systemic terms (rather than a breach of specific obligations, as in the first group of cases), the effects of which (taking the form of negative psychological experiences) can potentially affect any entity, and this in isolation from the specific circumstances of a given case. Civil liability may be a consequence of events from the first group; events from the second group may not constitute grounds for liability (as it is impossible to indicate specific obligations that have not been met).

The sense of security (although it is of a material nature and its perception is closely related to the person concerned) cannot be regarded as a personal right. Experiencing it (or its absence) depends on subjective personal

[25] Judgment of the Court of Appeal in Gdańsk of 29 December 2000, ref. no. I Aca 910/00, Legalis no. 52319; Judgment of the Supreme Court of 6 March 2009, ref. no. II CSK 513/08, Legalis no. 244060; Judgment of the Supreme Court of 21 April 2010, ref. no. V CSK 352/09, Legalis no. 381612.

and situational circumstances concerning a particular person. Furthermore, a sense of insecurity in a particular person does not necessarily correspond to an objective threat (moreover, a sense of insecurity in certain individuals or communities can even be artificially induced in the interest of certain groups). It is therefore excluded to protect a sense of security under rules applicable to the protection of personal property.

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