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PERSONAL FREEDOM AS A FUNDAMENTAL RIGHT IN A DEMOCRATIC STATE

WOLNOŚĆ OSOBISTA JAKO PODSTAWOWE PRAWO W PAŃSTWIE DEMOKRATYCZNYM



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ABSTRACT

The system of a democratic state is characterized by a specific system of relations between law, authority and citizens, which includes the need to comply with existing law and limit arbitrariness. The democratic nature of the state system is determined primarily by the fact that its sovereign is the nation. Therefore, in a democratic constitutional state, the norms that form the basis of the social and political order are established in accordance with the will of the majority of citizens. However, the government is obliged to respect the law it has created, which is literally above the state, and to respect the rights and personal freedoms of citizens.

In this study, personal freedom is presented as one of the fundamental rights in a democratic state. For this aim, the dogmatic-legal method was used. Therefore, it was based on the analysis of literature and interpretation of national and international legal acts relating to the issues taken.

KEYWORDS: *personal freedom, democratic state, human rights*

ABSTRAKT

System demokratycznego państwa charakteryzuje określony układ stosunków między prawem, władzą i obywatelami, co wiąże się z koniecznością przestrzegania ustanowionego prawa oraz ograniczenia samowoli. Demokratyczny charakter ustroju państwa warunkuje przede wszystkim fakt, że jego suwerenem jest naród. W związku z tym w demokratycznym państwie prawnym stanowione normy, będące fundamentem porządku społecznego i politycznego, ustanawiane są zgodnie z wolą większości obywateli. Natomiast władza jest zobowiązana do respektowania ustanowionego przez siebie prawa, które w sensie dosłownym stoi ponad państwem i kierować się poszanowaniem praw i wolności osobistej obywateli.

W niniejszym opracowaniu ukazana została wolność osobista jako jedno z podstawowych praw w państwie demokratycznym. W tym celu zastosowano metodę dogmatyczno-prawną. W związku z tym oparto się na analizie literatury i interpretacji aktów prawnych krajowych oraz międzynarodowych odnoszących się do podjętej problematyki.

SŁOWA KLUCZOWE: *wolność osobista, państwo demokratyczne, prawa człowieka*

DEMOCRATIC STATE AND PERSONAL FREEDOM

The main assumptions of the theory of a democratic constitutional state include: the separation of powers (legislative, executive and judicial); verification of the conformity of laws with the Constitution; independence of the judiciary; respect for human rights; individual freedoms and rights guaranteed in the Constitution; principle of retroactivity (the law does not apply retroactively); citizens are equal before the law and are not subject to discrimination; the right of citizens to an independent and impartial court; the authorities are guided by the principle of legalism; the right of citizens to public information.

At the same time, it should be noted that the norms established in a democratic constitutional state, the sovereign of which is the nation, must take into account respect for the rights of the individual (Seweryński, 2022, p. 11; Augustyniak, 2016, p. 11-12). Personal freedom is one of the most important in the catalogue of personal rights and freedoms (Wyrok Trybunału Konstytucyjnego, 2002) as well as of rights and freedoms in general and is classified as first-generation human rights. The catalogue of human rights included in the first generation human rights is based on the so-called existential human rights (the right to life, liberty and property (Stecko, 2018, p. 173).

At the same time, it should be noted that personal freedom, like other rights and freedoms, is an undefined concept. It is also difficult to interpret the elements of its definition from other provisions of the Constitution. Therefore, it can be said that it is an extremely abstract topic, even taking into account the specifics of constitutional regulations.

When analyzing freedom on the basis of Polish legal doctrine, it is also worth emphasizing that it is a primary, immanent feature that a person has at the moment of birth acquires (Kazimierczuk, 2014, p. 101). Due to the fact that a person can make the decisions that are most beneficial to him and thus decide his own destiny (Jabłoński, 2010, pp. 93-96).

The Supreme Court presented a synthetic approach to personal freedom, defining personal freedom as *the ability (independence, freedom) of a person to make decisions in accordance with his own will* (Uchwała, 1990). In addition,

it is worth recalling that, as already mentioned, Art. 41 of the Constitution of the Republic of Poland of 1997^[1].

PERSONAL FREEDOM IN INTERNATIONAL AND NATIONAL LEGISLATION

It should be noted that already the Universal Declaration of Human Rights of 1948 contained a number of provisions guaranteeing the preservation of personal freedom^[2]. In Art. 3 of this declaration contains a provision on the rights of every person, including: to freedom. The specialized literature emphasizes that Art. 11 refers to freedom that is broader than just protection against unlawful deprivation of the freedom to choose one's place of existence (Fuks, 1996, p. 9).

Personal freedom is also covered by Art. 9 of the above-mentioned Declaration, which prohibits arbitrary arrest, detention or exile. In Art. 11 this indicates that such detention should have certain legal bases and must be based on a provision of a relevant legal act or a decision of the body applying the law (judicial power).

Similar provisions are also contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which forms the basis of the Council of Europe system^[3]. In Art. 11 Article 5 of the above-mentioned Convention refers to the right to liberty and personal security. At the same time, this Convention emphasized that *the right to liberty and personal security does not concern the general freedom of man, but only protection against arbitrary or unlawful restrictions of a person's freedom of movement and disposal of his person by state authorities*. (Fuks, 1996, pp. 10-19).

The basic document that determines the position of an individual in the state is the Constitution (Kropiwnicki, 2006). One of the most important tasks of the

^[1] Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r. (Dz.U. 1997, Nr 78, poz.483 ze zm.).

^[2] Powszechna Deklaracja Praw Człowieka, https://www.unesco.pl/fileadmin/user_upload/pdf/Powszechna_Deklaracja_Praw_Czlowieka.pdf, (dostęp 19.08.2024).

^[3] Europejska konwencja praw człowieka (EKPC), <https://eur-lex.europa.eu/PL/legal-content/glossary/european-convention-on-human-rights-echr.html>, (dostęp 20.08.2024).

Constitution is the need to establish mutual relations between state authorities and citizens. The freedoms and rights contained in it are of a vertical nature, i.e. they apply both at the civil and state border (Kazimierczuk, 2014, p. 101).

According to some authors, the Constitution is created not only by norms and principles, but also by values, which can be expressed indirectly or *expressis verbis*. The methods of direct determination of values in the Constitution include provisions on individual freedoms and rights, according to which citizens are entitled to certain natural and inalienable freedoms and rights based on human dignity as the highest value of the entire constitutional order (Complak, 1998, p. 43). Therefore, as stated in art. 30 of the Constitution of the Republic of Poland: *The natural and inalienable dignity of man is the source of freedom and rights of man and citizen. It is inalienable and its respect and protection are the responsibility of the authorities.*”

The Polish Constitution provides legal protection for the following freedoms and human rights:

- human life (Article 38);
- personal freedom (Article 41.1);
- property and the right to inherit it (Article 21.1);
- freedom of conscience and religion (Article 53) (including freedom to profess religion, individually or collectively, to practice and teach religion publicly, as well as the right of parents to ensure that their children are brought up and instructed in religious beliefs in accordance with their beliefs (Article 48.2);
- marriage (as a union between a man and a woman), family, motherhood and parenthood (Article 18);
- freedom of the press and other means of social communication (Article 14),
- freedom of expression (Article 54.1), freedom of association (Article 58.1) and freedom of assembly (Article 57).

In addition, the 1997 Constitution of the Republic of Poland grants personal freedom and inviolability to „everyone”, i.e. not only Polish citizens, but also foreigners and stateless persons subject to the rule of the Republic of Poland.

Therefore, any living person, i.e. a natural person, can rely on state protection in case of violations of the institutions referred to in Art. 2. 41.

RESTRICTIONS ON PERSONAL FREEDOM IN THE LIGHT OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

Personal freedom belongs to the group of fundamental rights, but this does not mean that these rights are not subject to certain legal restrictions. It is therefore worth noting that for the functioning of societies and states it is necessary to restrict freedom (Kazimierczuk, 2014, p. 103). Personal freedom and inviolability within the meaning of Art. 41 of the Constitution of the Republic of Poland therefore belong to the group of those subject to regulation, as the state has the possibility to use coercive measures resulting in deprivation of liberty. These are measures taken by the state to protect public safety.

In Art. 41 of the Constitution of the Republic of Poland refers to measures such as:

- stopping,
- arrest,
- isolation sentences (imprisonment, 25 years imprisonment and life imprisonment),
- preventive measures

The first of the above measures, deprivation of liberty (Section 243 of the Code of Criminal Procedure), is a coercive measure; used during or immediately after the commission of a crime. Unless there are specific code requirements, this measure can be applied by any person, including a private individual who does not represent the State apparatus. However, it should be noted that they are obliged to hand over the arrested person to the police without delay. Detention is the only measure mentioned that may take place without the consent or order of the court. However, a person detained by court order should be released, as he or she is subject to control of the legality of the

deprivation of liberty, which *must include not only the legality of the decision on deprivation of liberty itself, its reasons and procedure, but also the manner of its implementation and, in particular, the duration of the deprivation of liberty* (Wyrok Trybunału Konstytucyjnego, 2002).

In case of detention, the Polish Constitution clearly defines the framework of deprivation of liberty. The content of Article 41 Section 3 states that every detained person must be informed promptly and in an understandable manner about the reasons for detention and must be handed over to the court within 48 hours of detention. The Constitution also provides that a detained person should be released if he or she is not served with a court decision on temporary detention together with the charges presented within 24 hours of his or her arrest. However, the adopted regulations apply only to detention in connection with the commission of a prohibited act or suspicion of it (Uchwała Sądu Najwyższego, 1995; Wyrok Trybunału Konstytucyjnego, 2002). It is also worth noting that constitutions rarely contain such detailed provisions on detention. This indicates that the legislator in the Polish Constitution attached great importance to the conditions of summary deprivation of liberty. The rules adopted in the Constitution have been incorporated into the Code of Criminal Procedure (Article 248, paragraphs 1 and 2). Any person against whom detention is imposed should be informed as soon as possible and in such a way that he or she understands why this has happened. Nevertheless, it is worth considering whether Art. 41 of the Constitution should not yet clearly specify who, when and for what reasons and on what basis could violate the personal freedom of an individual (Przybyszewska-Szter, 2006, p. 123).

Another state measure to protect public security that results in deprivation of liberty is pre-trial detention (§ 250 ff. of the Code of Criminal Procedure). However, this measure may only be used if other non-custodial security measures are deemed insufficient (§ 257, paragraph 1 of the Code of Criminal Procedure). In its current legal form, pre-trial detention is an instrument used in criminal proceedings, the purpose of which, according to Article 249, § 1, is, like other preventive measures, to ensure the proper conduct of the proceedings and, in exceptional cases, to prevent the accused from committing a new, serious crime (Bogunia, 2001, p. 304). However, this measure may only

be used if the evidence collected indicates that there is a high probability that the accused will commit a crime. Pre-trial detention essentially has a protective and preventive function (Skorupka, 2006, p. 109).

The coercive measures used by the state also include penalties: imprisonment, 25 years' imprisonment and life imprisonment. It should be noted, however, that these penalties can only be imposed by the court in the judgment concluding the criminal proceedings in the relevant instance. The above penalties thus constitute a sanction in the event of proof of a crime.

However, an exceptional example of isolation measures are protective measures. Under the Polish legal system, the authorities have at their disposal a number of other legal measures entailing deprivation of liberty, including: exclusion of a participant in court proceedings in the event of non-fulfillment of his or her duties in the proceedings or inappropriate conduct (Article 276 § 2 of the Code of Civil Procedure, Art. 287 § 2 of the Code of Criminal Procedure, Art. 96 of the Code of Criminal Procedure) or those that violate aspects of personal freedom other than physical inviolability, such as the institution of incapacitation.

In addition, it should be noted that restrictions on freedom and personal inviolability may also apply in a state of emergency. Special cases of application are situations such as states of emergency and martial law, i.e. those that can be introduced due to certain social or political phenomena, as well as the case of a state of natural disaster caused by a natural disaster. However, according to Article 233(1) of the Constitution of the Republic of Poland, humane treatment of persons deprived of their liberty may not be suspended even during martial law or a state of emergency. This provision also applies to persons against whom the coercive measures discussed have been applied for reasons related to the introduction of one of the above-mentioned states of emergency. However, in the event of a natural disaster, a legal violation of personal freedom may occur during the state of emergency (Article 233(2)), provided that the person concerned is not deprived of the right to appeal to a court.

CONCLUSIONS

In a democratic state, citizens and their rights, including the right to personal freedom, are the main subject of state measures to protect them. At the same time, it should be noted that there can be no democratic constitutional state if its authorities do not respect the rights and freedoms of citizens.

The Constitution of the Republic of Poland guarantees the rights of the individual, including the right to personal freedom. This is indicated by the approximately one hundred provisions it contains to protect these rights and freedoms (in addition to Articles 30–86, there are around 40 more provisions on this topic). We must also remember that ratified international conventions are equal to laws and that these rights are also protected by the European Union system.

However, there is a need in national legislation to establish legal regulations that protect personal freedom in the best possible way. This is a very important issue, as there has recently been a tendency to restrict personal freedom and to more isolate coercive measures and their long-term application.

Furthermore, it must be emphasized that the primary responsibility for respecting human rights, including the right to personal freedom, lies not only with the state but also with the international community.

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