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# Human Freedom in the Constitution of the Republic of Poland

**Keywords**: human freedom, the limits of freedom, principle of proportionality
**Słowa kluczowe**: wolność człowieka, ograniczenia wolności, zasada proporcjonalności

**Abstract**

The term "freedom" comes from the Latin language and is derived from the words *liber* – free, independent and *libertas* – freedom. In general, freedom means no coercion and the ability to act according to your own will, which also means making choices under all available options. Freedom appears both in the preamble and in many provisions of the Polish Constitution. Of the greatest significance is Article 31, which indicates that "Human freedom is subject to legal protection" (paragraph 1) and that "Everyone is obliged to respect the freedoms and rights of others. No one shall be compelled to do what he is not required by law" (paragraph 2). After these guarantees, the principle of proportionality – is included in paragraph 3 – indicating on the basis of which premises and criteria restrictions of freedoms and rights may be introduced. This provision implies three specific, detailed rules regarding the restriction of liberty: a) the principle of the exclusivity of the law; b) the principle of proportionality and c) the principle of preserving the essence of freedom and rights. The constitutional legislator has formulated in Art. 31 par. 3 also a closed catalog of limitation clauses that allow the restriction of freedom and human rights. These are the following premises: a) the premise regarding state security and public order; b) the premise regarding environmental protection; c) the premise regarding the protection of public health and morals and d) the premise regarding the freedoms and rights of others. The scope of

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freedom regulated by Art. 31 is universal because it applies to all freedoms and rights that are guaranteed in the Constitution.

**Streszczenie**

**Wolność człowieka w Konstytucji Rzeczypospolitej Polskiej**

Pojęcie „wolność" pochodzi z języka łacińskiego i wywodzi się od słów *liber* – wolny, niezależny oraz *libertas* – wolność. Generalnie rzecz biorąc wolność oznacza brak przymusu oraz możliwość działania zgodnie z własną wolą, oraz dokonywania wyborów spośród wszystkich dostępnych opcji. Wolność występuje zarówno w preambule, jak i w wielu przepisach Konstytucji RP. Najbardziej istotne znaczenie ma art. 31, w którym wskazano, że „Wolność człowieka podlega ochronie prawnej" (ust. 1) oraz, że „Każdy jest obowiązany szanować wolności i prawa innych. Nikogo nie wolno zmuszać do czynienia tego, czego prawa mu nie nakazuje" (ust. 2). Po tych gwarancjach, w ust. 3 zawarto zasadę proporcjonalności, wskazując na podstawie jakich przesłanek i kryteriów może dojść do wprowadzenia ograniczeń wolności i praw. Z przepisu tego wynikają trzy konkretne, szczegółowe zasady dotyczące ograniczenia wolności: a) wyłączności ustawy; b) proporcjonalności oraz c) zachowania istoty wolności i praw. Ustrojodawca sformułował w art. 31 ust. 3 także katalog zamknięty klauzul limitacyjnych, które dopuszczają ograniczenie wolności i praw człowieka. Są to przesłanki: a) bezpieczeństwa państwa i porządku publicznego; b) ochrony środowiska; c) ochrony zdrowia i moralności publicznej oraz d) wolności i praw innych osób. Zakres wolności z art. 31 ma charakter uniwersalny, ponieważ dotyczy wszystkich wolności i praw, które są zagwarantowane w Konstytucji.

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## I. The concept and essence of human freedom

The term "freedom" comes from the Latin language and is derived from the words *liber* – free, independent and *libertas* – freedom. In general, freedom means no coercion and the ability to act according to your own will, which also means making choices under all available options. It is also considered the independence, sovereignty, freedom and independence[2].

[2] Cf.K. Wojtyczek, *Wolność,* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny,* eds. W. Skrzydło, S. Grabowska, R. Grabowski, Warsaw 2009, p. 642; A. Chodubski,

In positive terms, individual freedom allows for real opportunity to make choices. Thus, an individual can freely shape their behavior in a given sphere, choosing the forms of activity or cessation of an activity that suits them best. In negative terms, individual freedom consists in the legal obligation to refrain from interfering in the sphere reserved for other persons[3].

In the Constitution of the Republic of Poland a distinction was made between "law" and "freedom"[4]. Granting citizens a "right" means that the constitutional legislator is entitled to regulate precisely all forms and methods of exercising this "right". Citizens, within the limits of the right granted, cannot go beyond the possibilities of acting granted to them. The concept of "freedom" has a much broader dimension. It means that the constitutional legislator leaves outside the scope of the regulation the forms and methods of exercising freedom, marking only the boundaries that the citizen must not cross. Within these limits, citizens therefore have unlimited freedom of choice as to the forms and methods of exercising the "freedom" granted to them[5]. State bodies have strictly defined competences and can act only on the basis and within the limits of the law[6].

The title of Chapter II of the Constitution begins with the words: "freedom, rights". By adopting this order, the constitutional legislator suggested a hierarchy of importance and it can be concluded that this order is not accidental.

The limits of exercising freedom are set out in Art. 31 section 2 of the Constitution. "Everyone" has a duty to respect the freedom and rights of others. This is understood as a prohibition of interference with other people's freedoms and rights. It also implies that "no one shall be compelled to do what the law does not mandate him".

*Wolność*, [in:] *Encyklopedia politologii. Tom 4: myśl społeczna i ruchy polityczne współczesnego świata*, eds. M. Marczewska-Rytko, E. Olszewski, Zakamycze 2000, p. 385.

[3] Cf. Constitutional Tribunal's judgment of February 18, 2004, reference number P 21/02, OTK ZU No. 2/A/2004, item 9.

[4] This distinction has a fairly long tradition and is also present in foreign languages, e.g. in English: *Rights and Freedoms*, fr. *droits et libertés*, germ. *Rechte und Freiheiten*, russ. *prawa i svobody*. Cf.W. Brzozowski, A. Krzywoń, M. Wiacek, *Prawa człowieka*, Warsaw 2018, p. 25.

[5] More on this topic can be found in: M. Chmaj: *Pojęcie i geneza wolności i praw człowieka*, [in:] *Konstytucyjne wolności i prawa w Polsce. Tom I: Zasady ogólne*, ed. M. Chmaj, Zakamycze 2002, pp. 11–13, P. Sarnecki, *Wolność zrzeszania się*, Warsaw 1998, p. 25.

[6] K. Wojtyczek, *Wolność...*, p. 642.

The above provision means that the interests of the individual, the interests of other entities and the public interest (of the whole of society) should be separated. Lack of such demarcation would cause collisions, which would furthermore promote arbitrariness or abuse of rights. The limit of respect for freedom must be precisely defined, and moreover it results from the very essence of the given X.

The right to personal freedom, as emphasized by the Constitutional Tribunal, is one of the most important human rights. However, this right, as well as other rights guaranteed in the constitution, may in some cases be limited in favor of the common good or other important constitutionally protected values[7].

## II. Human freedom in a general constitutional context

The Polish constitutional legislator refers to freedom in many parts of the Constitution. Beginning with the preamble, where there was a condemning reference to "bitter experiences from the times when fundamental freedoms and human rights were violated in our homeland", that is, primarily to the era of People's Poland. It was then declared that: "The Constitution is a fundamental right for a state based on respect for freedom and justice", while all who will apply these provisions of the Constitution have been called, "to do so by preserving the inherent human dignity, his right to freedom and the duty of solidarity with others". Although the preamble does not have strictly normative significance, it can help interpret other provisions of the Constitution[8].

The reference to freedom is also found in Chapter I of the Constitution, entitled 'Rzeczpospolita', among the guiding principles of the political system of the state. While Art. 5 of the Constitution states that the Republic of Poland "ensures human and citizen freedoms and rights". In addition, pursuant to Art. 37 everyone who is under the authority of the Republic of Poland, enjoys the freedoms and rights guaranteed in the Constitution, and exceptions to this rule relating to foreigners are to be determined by statute.

[7] Cf. Judgment of 1 June 1999, SK 20/98, OTK 1999/5/93.

[8] More on this topic can be found in: M. Chmaj, *Komentarz do Konstytucji RP. Art. 30, 31, 32, 33*, Warsaw 2019, pp. 63–92.

Art. 31 of the Constitution, which states that "Human freedom is subject to legal protection" (par. 1) and that "Everyone is obliged to respect the freedom and rights of others. No one shall be compelled to do what he is not required by law" (par. 2). After these guarantees, paragraph 3 contains the principle of proportionality, indicating on the basis of which premises and criteria restrictions of freedoms and rights may be introduced.

The scope of freedom from Art. 31 is universal because it applies to all freedoms and rights that are guaranteed in the Constitution. The exclusion of the admissibility of establishing restrictions occurs only when the Constitution explicitly recognizes a given right or freedom as "inviolable" (Art. 30) or when the inviolability of a given right or freedom results from international agreements (Art. 40, first sentence), because then the higher legal force of the contract excludes legislative interference in its regulations[9].

The Constitutional Tribunal in its judgment of March 7, 2007 pointed out that in the light of the existing acquis of the case-law and the doctrine of Art. 31 paragraphs 1 and 2 of the Constitution perform two basic functions[10]:

- complements the provisions defining individual constitutional freedoms;
- provides the basis for an autonomous, subjective right to freedom, and the essence of this right lies in "the freedom to take acts of will and choice"[11].

Referring to the above ruling, in the judgment of July 2, 2007 the Tribunal stated that "in the event that the compliance of a normative act with the principle of human freedom – understood as the freedom to decide on one's own conduct – which is specified and developed in separate provisions of the Constitution, is questioned, primarily constitutional provisions should be considered the basis for scrutiny"[12].

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9 Cf.M. Wyrzykowski, *Granice praw i wolności – granice władzy,* [in:] *Obywatel – jego wolności i prawa,* ed. B. Oliwa-Radzikowska, Warsaw 1998, p. 58.

10 Cf. judgment of December 20, 1999, reference number K. 4/99, OTK ZU No. 7/1999, item 165 and L. Wiśniewski, *Prawo a wolność człowieka. Pojęcie i konstrukcja prawna,* [in:] *Podstawowe prawa jednostki i ich sądowa ochrona,* ed. L. Wiśniewski, Warsaw 1997, p. 54.

11 K 28/05, OTK-A 2007/3/24.

12 In the Tribunal's assessment, in such situations, there is no need to invoke – as a basis for control – the principle of human freedom, expressed in Art. 31 paragraph 1 of the Constitution, which primarily serves as a guide on how to interpret the aforementioned specific provisions of the Constitution. Ref. K 41/05, OTK-A 2007/7/72.

The meaning of Art. 31 also results from its inclusion in the systematics of the Constitution. This provision was clearly distinguished by the editors at the very beginning of Chapter II devoted to the freedoms of human rights and obligations (just after the principle of dignity contained in Article 30), but also in the subsection "General principles". It follows that the provisions of the whole Chapter II should be interpreted considering the principle of freedom[13].

In turn, in Art. 41 regulations contained in art. 31 paragraph 1 stressing that everyone is guaranteed personal inviolability and personal freedom, have been developed. In addition, the penultimate subsection of Chapter II, entitled "Measures to protect freedom and rights" (Articles 77–81), indicates the most important legal institutions for the protection of freedom[14].

The regulations contained in chapter XI of the Constitution "Extraordinary States" refer to human freedom. Art. 228 par. 4 indicates that the Act may specify the grounds, scope and procedure of compensation for property losses resulting from the limitation of the state of liberty and human and citizen rights during a state of emergency. Whereas Art. 233 specifies what restrictions on constitutional freedoms and rights may not be imposed during martial law and the state of emergency (par. 1) and in a state of natural disaster (par. 2).

## III. Premises for restricting constitutional freedoms and rights

As already mentioned, Art. 31 section 3 contained premises for restricting the use of constitutional freedoms and rights. They can be "established only by statute and only when they are necessary in a democratic state for its secur ity or public order, or for the protection of the environment, public health

[13] Since human dignity is subject to absolute protection, this is the only right with regard to which the principle of proportionality cannot be applied. See. Judgment of the Constitutional Tribunal of 5 March 2003, K 7/01, OTK ZU 3/A/2003, item 19 and the judgment of the Constitutional Tribunal of 7 March 2007, K 28/05, OTK-A 2007/3/24.

[14] The following may be distinguished: a) the right to compensation for damage caused by unlawful action of a public authority; b) the right to have fair trial and hearing of the case before the court; c) the right to appeal against judgments and decisions issued at first instance; d) a constitutional complaint; and e) the right to address the Ombudsman.

and morality, or the freedom and rights of others. These limitations shall not violate the essence of freedoms and rights".

Three specific, detailed rules follow from the above provision: a) the exclusivity of the act; b) proportionality and; c) preserving the essence of freedom and rights.

The rule of exclusivity of the act is a formal general clause. It sanctions a common principle in democratic countries that the determination of constitutional boundaries of freedoms and rights can take place only in an act of law, i.e. in a basic normative act of general and abstract nature, universally binding, adopted by the body possessing legislative power[15].

The Constitutional Tribunal has recognized that "making the admissibility of restrictions on the rights and freedoms conditional on their establishment" only by statute "is more than just a reminder of the general principle of the exclusivity of the statute for normalizing the legal situation of individuals, which is a classic element of the idea of the rule of law. It is also the formulation of the requirement of adequate detail in the statutory regulation[16].

The statutory regulation order should be considered to be functionally related to the principles of legal certainty and security as well as protection of trust in the state and the law it creates. Hence two additional reservations:

- inadmissibility of referring in this matter to executive acts (ordinances), acts of local law or acts of public administration bodies;

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[15] More on this topic can be found in: W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2013, pp. 44–45; I. Malinowska, Źródła prawa w Konstytucji RP z 1997 r., „Przegląd Sejmowy" 2017, No. 6, pp. 282–294; M. Zubik, *Ustawa a bieżące potrzeby prowadzenia polityki państwa*, „Przegląd Legislacyjny" 2014, No. 2, pp. 12–22; M. Fedorowicz, *Ustawa po akcesji Polski do Unii Europejskiej (zagadnienia wybrane)*, „Kwartalnik Prawa Publicznego" 2004, No. 2, p. 70; J. Zakolska, *Problem klauzuli ograniczającej korzystanie z praw i wolności człowieka w pracach konstytucyjnych, w poglądach doktryny i orzecznictwa Trybunału Konstytucyjnego*, „Przegląd Sejmowy" 2005, No. 5, p. 12.

[16] The Tribunal also indicated that since limitations of constitutional rights and freedoms can be established "only" in an act, it includes an order to complete the statutory regulation, which must independently determine all the basic elements of limiting a given right and freedom, so that on the basis of reading the provisions of the Act, a complete outline of this restriction could be designated. On the other hand, it is unacceptable to adopt blanket clauses in the Act, leaving the executive or local government bodies free to regulate the final shape of these restrictions, and in particular to determine the scope of these restrictions". See Judgment of 12 January 2000, P 11/98, OTK 2000/1/3.

– the necessity, detail, clarity and precision of the statutory regulation that will deprive the authorities applying the rights of excessive freedom in establishing in practice the subjective and objective scope of constitutional restrictions of the constitutional freedoms and rights of the individual[17].

The next two, resulting from Art. 31 par. 3, the detailed rules are material. The principle of proportionality is also referred to as a prohibition of undue interference. It has been included in a narrower, limited scope than in Art. 2 of the Constitution[18]. It is recognized as an integral part of the rule of law in the constitutional case law of the European Union and in the case law of the European Court of Human Rights[19].

[17] In the judgments of April 20, 2004 K 45/02, OTK-A 2004/4/30 and of October 30, 2001 K 33/00, OTK ZU No. 7/2001, item 217 of the Constitutional Tribunal emphasized that "this assumption can be generally defined as the principle of specificity of statutory interference in the sphere of constitutional freedoms and rights of the individual. Guided by this principle, the Constitutional Tribunal represents the position that exceeding a certain level of ambiguity with regard to legal provisions may constitute an independent premise for stating their non-compliance with both the provision requiring statutory regulation of a given field (e.g. restrictions on the exercise of constitutional freedoms and rights, Article 31 (3) sentence 1 of the Constitution), as well as with the rule of law as expressed in Article 2 of the Constitution".

[18] More on this topic can be found in: J. Dylewska, *Zasada proporcjonalności w orzecznictwie Trybunału Konstytucyjnego po wejściu w życie Konstytucji RP z 2 kwietnia 1997 r.*, „Przegląd Sejmowy" 2001, No. 1, pp. 45–57. This rule has been the subject of numerous judgments of the Constitutional Tribunal both on the basis of the Constitution of 1952 and 1997, e.g. a) rulings of: October 12, 1993, file reference number K 4/93, April 26, 1995, file reference number K 11/94, January 9, 1996, file reference number K 18/95, January 31, 1996, reference number K 9/95, September 24, 1996, reference number K 13/95, October 23, 1996, reference number K 1/96, October 30, 1996, reference number K 3/96, 20 November 1996, file reference number K 27/95; b) Judgments of June 1, 1999, SK 20/98, June 28, 2000, K 34/99, October 9, 2001, SK 8/00, July 8, 2003, P10/02, 22 November 2004, SK 64/03, June 29, 2005, SK 34/04, December 12, 2005, K 32/04, October 11, 2006, P 3/06, July 10, 2007, SK 50/06, 5 February 2008, K 34/06, 23 April 2008, SK 16/07, 12 May 2008, SK 43/05, 26 May 2008, SK 25/07, 3 June 2008, K 42/07, 10 July 2008, P 15/08, 29 September 2008, SK 52/05, 7 October 2008, P 30/07.

[19] ECtHR in the case of Silver and Others v. United Kingdom the ECtHR pointed out that: a) the adjective "necessary" is not synonymous with the adjective „indispensable", nor is it as flexible as the words "admissible", "ordinary", "useful", reasonable, or "desirable"; b) the term "necessary in a democratic society" means that the interference must respond to a "pressing social need" and be proportionate to the legitimate aim pursued; c) provisions providing for exceptions or the possibility of restrictions must be narrowly interpreted, M. Szuniewicz,

The principle of proportionality means that the measure used to achieve the intended purpose must be necessary and appropriate and that the interference connected with it should not be excessive. This principle sets the limits of the constitutional legislator's interference in constitutional freedoms and rights.

The Constitutional Tribunal noted that "necessity" in a democratic state creates an order to consider, whether: a) the introduced regulation is able to cause its intended effects, b) the introduced regulation is necessary to protect the public interest with which it is connected, c) the effects of the introduced regulation remain in proportion to the burdens it imposes on the citizen (proportionality in the strict sense)[20]. The negative effects of regulation can never prevail and must be in reasonable proportion to the intended purpose and content of those freedoms and rights that are guaranteed by constitutional norms[21].

The Constitutional Tribunal also noted that the said proportionality should be understood as a requirement to use such legal means that will be effective, and thus actually serving the purposes pursued by the constitutional legislator. In addition, it is about necessary measures, in the sense that they will protect certain values in a way or to a degree that could not be achieved by other means. Indispensability also means taking advantage of measures that are minimally burdensome to entities whose rights or freedoms will be restricted"[22].

The Tribunal also stated that when introducing restrictions on the rights and freedoms of the individual, among the possible measures of action, one should choose the least burdensome for the entities to whom they are to be applied or onerous not more than is necessary to achieve the assumed goal.

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*Ochrona bezpieczeństwa państwa jako przesłanka ograniczenia praw i wolności jednostki w świetle Europejskiej Konwencji Praw Człowieka*, Warsaw 2016, p. 53.

[20] Judgments of the Constitutional Tribunal of: June 28, 2000, K. 34/99, OTK ZU No. 5/2000, item 142 and P 14/01, March 13, 2007, K 8/07, OTK ZU No. 3/A/2007, June 3, 2008, reference number K 42/07, OTK ZU No. 5/A/2008, item 77.

[21] Judgments of: January 12, 1999, P. 2/98, OTK ZU No. 1/1999, item 2; September 22, 2005, Kp 1/05, OTK ZU No. 8/A/2005, item 93; December 12, 2005, K 32/04, OTK ZU No. 11/A/2005, item 132; January 18, 2006, K 21/05, OTK ZU No. 1/A/2006, item 4.

[22] Judgment of 22 September 2005, reference number Kp 1/05, OTK ZU No. 8/A/2005, item 93 and the judgment of May 26, 2008, reference number SK 25/07, OTK ZU 6A/2008, item 119.

Determining whether the principle of proportionality has been violated cannot be abstract but should consider the specificity of individual rights[23].

In the judgment of June 27, 2008, the Constitutional Tribunal recalled that "the limits of interference of public authorities in the sphere of constitutional rights, specified in Art. 31 paragraph 3 of the Constitution, cannot be considered as completely independent models of constitutional review of rights, but must always be referred to specific constitutional rights. Article 31 (3) does not set general limits for the operation of public authorities, but sets limits on interference in the specific constitutional rights guaranteed in specific constitutional provisions. Assessment of whether constitutional restrictions imposed fall within the limits set out in Article 31 par. 3 of the Constitution, is possible only in relation to specific rights guaranteed in specific constitutional provisions"[24].

Article 31 (3) of the Constitution applies only to constitutional freedoms and rights, i.e. subjective rights, which are based on a norm of constitutional rank. The clauses contained therein will not therefore relate to freedoms and rights having a non-constitutional nature, and which have been specified in ratified international agreements or statutes[25].

## IV. Catalog of limitation clauses allowing restrictions on human rights and freedoms

The constitunal legislator has formulated in Art. 31 section 3 closed catalog of limitation clauses that allow the restriction of freedom and human rights.

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[23] Judgment of June 1, 1999, SK 20/98, OTK 1999/5/93. The Tribunal also indicated (judgment of 14 December 2017, SK 39/15. OTK-A 2017/86) that "any restriction on the exercise of constitutional freedoms and subjective rights must be intentional (intentional) from the point of view of the protection of the values listed in art. 31 paragraph 3 of the Constitution, adequate to the expected result, necessary (in the sense that the result cannot be achieved by other, less intrusive means) and also proportionate as regards the balance of benefits and burdens arising from the restriction (proportionality test)".

[24] K 51/07, OTK-A 2008/5/87.

[25] M. Piechowiak, *W sprawie stosowalności klauzuli limitacyjnej a art. 31 ust. 3 Konstytucji RP do art. 38 dotyczącego ochrony życia*, [in:] *Dylematy praw człowieka*, eds. T. Gardocka, J. Sobczak, Toruń 2008, pp. 82–83.

These are the premises of: a) state security and public order; b) environmental protection; c) protection of public health and morals, and d) freedom and rights of others.

The first of the above clauses refers to state security and public order. In general, state security is a state of non-threat that allows its safe existence and development[26]. They are also defined as the ability of the state to defend recognized values against internal and external threats, to safeguard territorial integrity, to preserve the biological existence of the people living in it and to maintain sovereignty[27]. State security is a constitutionally particularly protected value, as it appears in Art. 5, indirectly in Art. 26, in Art. 126, or finally in Art. 146 par. 4 point 7, which specifies that the Council of Ministers "ensures internal security of the state and public order" and – in accordance with point 8 – "ensures external security of the state". This provision is of expertise nature and indicates the authority competent to settle these matters.

In turn, public order is a state of social relations that ensures the undisturbet functioning of the state and society, and protects the interests of individuals, created by legal and non-legal norms[28].

The argument regarding environmental protection is closely related to Art. 74 of the Constitution, where it was stipulated that "environmental protection is the responsibility of public authorities" (par. 2) and that "everyone has the right to be informed about the state of environmental protection" (par. 3). The doctrine indicates that the constitutional legislator links the concept of the environment to the need for public authorities to ensure ecological safety, which clearly indicates the understanding of the concept of the environment as a natural environment. The content of the obligation to protect the

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26 W.J. Wołpiuk, *Siły Zbrojne w regulacjach Konstytucji RP*, Warsaw 1998, pp. 47–48 and A. Bień-Kacała, *Bezpieczeństwo w Konstytucji RP z 1997 r. – wstępna diagnoza*, „Przegląd Prawa Konstytucyjnego" 2015, No. 2, pp. 19–24.

27 M. Czuryk, K. Dunaj, M. Karpiuk, K. Prokop, *Bezpieczeństwo państwa. Zagadnienia prawne i administracyjne*, Olsztyn 2016, p. 21, W. Kitler, *Pojęcie bezpieczeństwa*, [in:] *Aspekty prawne bezpieczeństwa narodowego RP. Część ogólna*, eds. W. Kitler, M. Czuryk, M. Karpiuk, Warsaw 2013, p. 26.

28 Cf A. Hernas, *Konstytucyjne prawo do prywatności a bezpieczeństwo państwa i porządek publiczny*, „Państwo i Społeczeństwo" 2009, No. 3, pp. 161–171; A. Osierda, *Prawne aspekty pojęcia bezpieczeństwa publicznego i porządku publicznego*, „Studia Iuridica Lublinensia" 2014, No. 23, pp. 105–106; E. Ura, *Prawo administracyjne*, Warsaw 2012, pp. 385–386.

environment falling on public authorities will be to take a variety of steps, including those which are aimed at ensuring the maintenance of the current state of the environment and preventing various entities from activities that are harmful to the environment[29].

The next premises are public health and morality. The task concerning public health should be understood as the task carried out by the joint operation of public institutions (authorities) and organized effort undertaken by the society aimed at restoring the population's health as well as its protection and promotion. It is connected with – indicated in Art. 68 par. 3–5 – the obligation of public authorities to: provide special health care for children, pregnant women, people with disabilities and the elderly, combat epidemic diseases and prevent adverse health effects of environmental degradation, and promote the development of physical culture.

In turn, public morality is, according to the doctrine, a general clause serving to protect public values, that is, so well established and accepted by the majority of society that they can be considered characteristic. On the one hand, the presence of this clause has a protective function, while on the other it may pose a potential threat to various minorities, which should be protected in a democratic system[30].

The last premise is the only one that is private and concerns the protection of the freedoms and rights of others. This implies the obligation on public authorities to resolve conflicts between individual freedoms and rights by formulating their restrictions. Two conflict situations can be distinguished here: collision of freedoms and rights and competition of freedoms and rights[31].

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[29] B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2009, p. 377; U. Wąsikiewicz-Rusnak, *Prawo ochrony środowiska w Polsce oraz w Unii Europejskiej*, „Zeszyty Naukowe Wyższej Szkoły Finansów i Prawa w Bielsku-Białej" 2009, vol. 13, No. 1, pp. 57–65; R. Miklaszewska, *Prawo ochrony środowiska w Unii Europejskiej*, „Przegląd Ustawodawstwa Gospodarczego" 2014, No. 5, pp. 7–11; U. Wąsikiewicz-Rusnak, *Prawo ochrony środowiska w Polsce oraz w Unii Europejskiej*, „Zeszyty Naukowe Wyższej Szkoły Finansów i Prawa w Bielsku-Białej" 2009, vol. 13, No. 1, pp. 57–65.

[30] Cf.A. Kalisz, *Klauzula moralności (publicznej) w prawie polskim*, „Principia" 2013, No. LVII-LVIII, p. 196; T. Buksiński, *Moralność publiczna i jej wpływ na funkcjonowanie sfery publicznej*, „Zeszyty Naukowe Politechniki Poznańskiej. Organizacja i Zarządzanie" 2017, pp. 29–36.

[31] Cf.B. Banaszak, *Konstytucja...*, pp. 178–179.

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