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The Right to Peace in the Polish Legal System: Considerations *de lege lata*

Abstract: Nowadays *peace* became scarce. Expanding conflicts, terrorist attacks and the uncertainty so common to today's times put in question the value that was won after many years of war. The Constitution is free from regulations treating directly about peace. There are only few references to it. Perhaps, peace is a luxury for which we have to fight, and neither a right that must be protected nor freedom which we can/should use. Maybe it is not supposed to be talked about *the right* to peace, but about some kind of *a privilege*. Therefore, it would be necessary to admit, that there is a mistake done already in the subject of this paper. This area seems also to be interesting especially, when moving the optics and focusing on the actions and declarations of heads of states while implementing the common political objectives that are at odds with objectives of other/opposite countries. The word *war* is used like a substitute for terms 'peace, freedom and prosperity', or even worse, like a way to it.

Keywords: *right to peace; freedom; peace*

Introduction

Peace is taken for something granted, and due to that, it would be hard to confirm, if peace is considered as value itself. We remember about World War II and its consequences to whole society. We are ready to take part in protests against war in Syria (though our statement to refugees is not that clear). We are even ready to fight for peace or worse - in the name of peace.

In 1795 Kant wrote a small booklet *Zum ewigen Frieden, ein philosophischer Entwurf*, in which he stated his point of view of international politics (Załęski, 1875,

p.4). It seems, that Kant anticipated international organizations created in order to secure peace and Karol Kuźmicz (2009, p. 66) states even, that *Zum ewigen Frieden...* is already a treaty ready to sign. However, Kant 'only' followed de Saint-Pierre and Rousseau, and they drew from Grotius, Spinoza and Leibniz (Blaszke, 2013, p. 93–108). Presumptions of Kant's philosophy seem to stay in odd with attributes of power. On other hand, it looks like both Kant and attributes of power base on same presumption - human as a free existence able to enforce right to themselves and to others as well (Sztompka, 2009, p. 369–386; Lange et al., 2009, p. 95–103). *Peace* seems to be a luxury for which people sometimes have to pay, for e.g. taxes, as it is in Republic of Guinea (Trusewicz et al., 2013). The importance of the undertaken matter may be finally underlined by the fact that the Millennium year was proclaimed as the Year for the Culture of Peace¹ and period 2001–2010 was stated as International Decade for a Culture of Peace and Non-Violence for the Children of the World (Declaration and Programme of Action on a Culture of Peace, 1999). Following the Declaration on the Preparation of Societies for Life in Peace, as long as wars begin in the minds of men, it is in the minds of men that the defence of peace must be constructed (Preamble of the Declaration on the Preparation of Societies for Life in Peace, 1978).

Of course we may put a lot of *but* towards Kant's presumptions, but (sic!) world has to face same temptations and way to fulfil them seems to be changeless. It is hardly possible – if possible at all – to deny Marek Blaszke, who said

In 2012, the European Union was awarded the Nobel Peace Prize. Her forerunners, visionaries de Saint-Pierre, Rousseau, Kant, enjoy immensely. Who knows, however,

¹ *Culture of peace* is a set of values, attitudes, traditions and modes of behavior and ways of life based on: (a) Respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation; (b) Full respect for the principles of sovereignty, territorial integrity and political independence of States and non-intervention in matters which are essentially within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations and international law; (c) Full respect for and promotion of all human rights and fundamental freedoms; (d) Commitment to peaceful settlement of conflicts; (e) Efforts to meet the developmental and environmental needs of present and future generations; (f) Respect for and promotion of the right to development; (g) Respect for and promotion of equal rights and opportunities for women and men; (h) Respect for and promotion of the right of everyone to freedom of expression, opinion and information; (i) Adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations; and fostered by an enabling national and international environment conducive to peace; *Declaration and Programme of Action on a Culture of Peace*, 1999, Art.1.

the extent to which the current peace in Europe is also merit, paradoxically, nuclear weapons, providing a balance of fear before using it? We have a peace, but we sleep, to put it mildly, on a powder keg (Błaszke, 2013, p. 107).

Polish Regulations on the Right to Peace

It would be hard to talk about ‘a right to peace’ in the context of constitutional right. The Polish Basic Law does not mention about a right to peace. It refers to the peace only in few records. Thus we have to point articles 89 par. 1², 116 par. 1³, 134 par. 2⁴. However, if we take into consideration their general overtone, they are revolving more around war than peace. Nevertheless none of them treats about ‘a right to peace’. There is no such a phrase in polish constitutional law⁵. For a change Constitution of United States of America mentions about peace already in preamble:

We the People of the United States, in Order to form a more perfect Union, establish Justice, *insure domestic Tranquillity*, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Prosperity, do ordain and establish this Constitution for the United States of America (The Constitution of the United States)⁶.

It seems, that discussion about the right to peace needs to be started from the very origin – the genesis (Krzysztofik, 2009). So what is peace - in other words, what can be define by *peace*. As long as there is no one legal definition of peace, some define it as a lack of war or a rapid conflict (Brander et al., 2005, p. 402–403)– hence peace may occur in two types: narrowed and extended. The lack of war among states is a narrow type, whilst extended form refers to lack of war combined with a situation when such values as equality, justice and development are secured (Brander, 2005, p. 403). But others, e.g. UN, are on the opinion, that peace is not only the absence of conflict, but

² “Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute – if such agreement concerns:(1) peace, alliances, political or military treaties; (2) freedoms, rights or obligations of citizens, as specified in the Constitution; (3) the Republic of Poland’s membership in an international organization; (4) considerable financial responsibilities imposed on the State; (5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute”.

³ “The Sejm shall declare, in the name of the Republic of Poland, a state of war and the conclusion of peace”.

⁴ “The President of the Republic, in times of peace, shall exercise command over the Armed Forces through the Minister of National Defence”.

⁵ In fact none of European constitutions refers to right to peace.

⁶ Other references to peace are included in e.g. Article I Section 10.

it also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation (Declaration and Programme of Action on a Culture of Peace, 1999).

Right to peace provides some difficulties. First of all it seems, that discussion on a right to peace needs to be guided on different track than national level. Or even tracks (two of them, however combining). The reason is simple - despite the fact, that national law is silent on a right to peace, the relevant provisions can be derived from European law (first track). In that case, we will not only talk about 'right to peace', but also about the 'right to peace and security'⁷. Events of the Second World War were a kind of lesson learned for international society, and caused among other things, condemning the use of force as a solution for tensions between states (Skowroński, 2003, p. 24). The characteristic feature of international law of peace is creating its subsystems specific for individual regions. Following Andrzej Skowroński (2003, p. 24), we may point below elements as sources of European law of peace:

- principles and norms of general international law and the UN security system;
- resolutions of the European organizations and international agreements;
- European court judgments;
- multilateral agreements agreed at international conferences ; as well as other acts which are not agreements, but causing certain legal consequences;
- bilateral contracts implicating for European safety.

For example, in accordance to the above sources, Declaration on the Preparation of Societies for Life in Peace from 1978 states clearly, that every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace (A/Res/33/73, 1978). Moreover, Declaration on the right of peoples to peace (A/Res/39/11, 1984) 'secures' individuals and people's right to peace. Furthermore, the Charter of the UN indicates already in its Preamble that UN was settled "to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security" (Charter of the United Nations, 1945). It points also the aims on UN referring to peace, which are:

- maintaining international peace and security;
- ending of taking effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace brought about by peaceful means, and in conformity with the principles of justice and international law;

⁷ Understood as international law of peace and security. For the purpose of this article term *right to peace* will be used.

- adjusting or settling of international disputes or situations which might lead to a breach of the peace (Charter of the United Nations, 1945).

On the other hand peace is a part of human rights, that not only mention about right to peace, but also secure it (second track). Polish Constitution reflects the division done in human rights, which, though still understood as one part, are however divided into generations and categories. Therefore, it is justified to reach to the field of human rights while discussing the right to peace. At that point it is important to start from human rights' generations. There are (basically) three generations⁸: the first generation: personal and political rights; the second generation: social, economic and cultural rights; the third generation: solidarity rights/collective rights. Due to the fact that right to peace refers to whole humanity and not only to individual, it is an example of a right belonging to the third generation.

And last but not least, the third element that plays important role in analysing the right to peace - strongly connected to human rights, therefore we stay on second track - is human dignity. According to the Constitution of the Republic of Poland, the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities (Konstytucja Rzeczypospolitej Polskiej, 1997⁹). The role and importance of human dignity is also underlined by introductions of Human Rights Pacts from 1966 (Jasudowicz et al., 2010, pp. 224–225). This means, that rights and liberties have their source in human dignity, and they do not depend on legislator's will (Prokop, 2011, p. 47). Still, legislator possesses possibility to limit rights and liberties of individuals. The source of these limitations is Article 31 paragraph 3 of the Constitution, according to which any limitation upon the exercise of constitutional liberties and rights may be imposed only by the Act, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of liberties and rights. Limitations are also acceptable in accordance to Art. 2 of European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

⁸ Some find it proper to include four generations. First three of them are analogous to 3-trile division but the fourth generation includes e.g. rights of national minorities. More: Gronowska et al., 2010, pp. 224–225.

⁹ Also Universal Declaration on Human Rights refers to dignity in its Preamble: “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (Universal Declaration on Human Rights).

It seems, that the same as all other rights (excluding absolute rights), right to peace may be limited. However, following Tadeusz Jasudowicz (Jasudowicz et al., 2010, p. 233), it is recommended to notice, that limitations do not weaken international prevention of human rights, but they only define their core, they also form the basis of judgment of the States done upon their limitations. If we consider the role of discussed matter, the fact that it combines with safety and other rights that can hardly exist or cannot exist at all without peace as well as its catchment, situations not only terming but also judging limitation while peacetime need to be analysed in detail. Therefore, it seems justified to refer at this point to extraordinary measures. Especially, that regulations on the state of war are placed in Constitution in different chapter than martial law¹⁰, what results in the fact, that state of war does not involve changes in national law (Convention with respect to the Laws and Customs of War on Land, 1899/1907), mostly because the very first consequence of declaring the war is change in previously existing relations *between states* (Kęsoń, 2014, p. 148). On that basis, we may omit state of war in this essay and focus on martial law instead. According to the Constitution it may be introduced in case of:

- external threats to the State;
- acts of armed aggression against the territory of the Republic of Poland;
- when an obligation of common defence against aggression arises by virtue of international agreement (Konstytucja Rzeczypospolitej Polskiej, 1997).

For the purposes of introducing martial law, it is necessary to define ‘external threat to the State’. And it could be easy, if not the fact, that there is no legal definition of ‘external threat’. Therefore the Council of Ministers must each time define the type of threat (Kęsoń, 2014, p. 153). However, the threat must be military (e.g. terrorist threat justifies introducing martial law, but more appropriate would be state of emergency) (Prokop, 2011, pp. 197–198). Secondly, there is no binding international definition of ‘armed aggression’ (Prokop, 2011, p. 198). In that case, both, ‘external threat’ and ‘armed aggression’, need to be derived from international law¹¹; respectively from Article 51 of the Charter of the UN and Article 5 of the North-Atlantic Treaty (Prokop, 2011, p. 198).

Martial law may be introduced either on whole territory or on part of it (Konstytucja Rzeczypospolitej Polskiej, 1997) by the President on the request of the Council of Ministers (1997). Both elements are required despite the fact, that according to

¹⁰ State of war was defined and regulated by Convention with respect to the Laws and Customs of War on Land. See also: Convention for the Pacific Settlement of International Disputes.

¹¹ E.g. Declaration on the Preparation of Societies for Life in Peace states clearly in Art. I par. 2, that a war of aggression, its planning, preparation or initiation are crimes against peace and are prohibited by international law (Declaration on the Preparation of Societies for Life in Peace, 1978).

Polish Constitution, the organ responsible for assurance of the internal security of the State and public order is the Council of Ministers (1997). Such requirement for cooperation is justified by the need of guarantying interests and security of the State (Skrzydło, 2013, p.304). Subsequently the regulation needs to be submitted to the Sejm (within 48 hours from signing by the President) and Sejm considers it immediately (Konstytucja Rzeczypospolitej Polskiej, 1997). Martial law is regulated in details by *Ustawa z dnia 29 sierpnia 2002 r. o stanie wojennym oraz o kompetencjach Naczelnego Dowódcy Sił Zbrojnych i zasadach jego podległości konstytucyjnym organom Rzeczypospolitej Polskiej*. Besides, Poland is a signatory of particular international documents, which refer (to a varying extent) to peace. And basically regulations about peace (especially referring to an act of armed aggression and obligation resulting from an international agreement) should be considered in the context common for international law (Prokop, 2011, p.198). Especially, that when introducing the martial law, the Minister of Foreign Affairs is obliged to notify the Secretary General of the UN and Secretary General of the Council of Europe about the introduction and its reasons, as well as its recalling (2011, p. 199)¹². Therefore it is advisable to mention the most important documents binding Poland and referring to the peace, which are:

1. The Charter of the United Nations;
2. The North-Atlantic Treaty;
3. The European Convention on Human Rights;
4. International Covenant on Civil and Political Rights,
5. and right to peace is constantly a subject of a discussion of Human Rights Council of the UN¹³, started in 2008 and including the OEWG¹⁴ sessions (Fernandez & Puvana, 2015).

¹² “Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed”(European Convention on Human Rights, 1950). “Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation”(International Covenant on Civil and Political Rights).

¹³ The result (one of many) is Resolution adopted by HRC 23/16, *Promotion of the right to peace* (2013).

¹⁴ Open-Ended Working Group.

Peace as a right is regulated by already quoted Declaration on the Preparation of Societies for Life in Peace. This document, moreover, defines the way to maintenance the peace, which is “the elimination of the threat inherent in the arms race, as well as efforts towards general and complete disarmament, under effective international control, including partial measures with that end in view, in accordance with the principles agreed upon within the United Nations and relevant international agreements” (Declaration on the Right of Peoples to Peace, 1984). Besides, peace as a right is also stated in the Declaration on the Right of Peoples to Peace, in which we may read, that the General Assembly of UN solemnly proclaims that:

- the peoples of our planet have a sacred right to peace;
- the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State.

According to this document, “Assembly also emphasizes that ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war” (Declaration on the Right of Peoples to Peace, 1984).

It seems, that contrary to the appearances, the scope of documents referring to ‘the right to peace’ is growing, but still it’s meagre. Most often peace is pointed as an aim or value and rarely as a right belonging to an individual. What may seem surprising, right to peace is not secured by the Charter of Fundamental Rights of the European Union (2000), though Charter consists of rights included in other international documents (Cymerys, 2012, p. 498). And although the current regulation justifies to define peace as a value (perhaps also of public interest in relation to the particular interests of countries), this interpretation of the peace as a right, indicates direct reference to the theoretical aspect of human rights. Especially, that we may speak about ‘a culture of peace’ (Declaration and Programme of Action on a Culture of Peace, 1999).

It was already mentioned at the very beginning, that Constitution refers to peace only in few articles. Therefore, if we discuss about a right to peace on national level, it is necessary to reach lower - to acts. As long as we already know, that while tending to peace we have to eliminate war, the Penal Code penalizes initiation or waging of a war of aggression in Polish law. According to the Article 117 it is punishable by imprisonment for not less than 12 years, 25 years or life imprisonment. Arrangements are punishable by imprisonment for not less than three years. And whoever publicly incites to initiate a war of aggression, shall be subjected to imprisonment from three months to five years (*Kodeks karny*, 1997).

To fulfil the aim of this article, it is worth to mention about two acts. First of all *Ustawa o powszechnym obowiązku obrony Rzeczypospolitej Polskiej* (1967) especially its part 1

and 2: services for defence. But only “mentioning” seems to make sense, as long as the act doesn’t provide with any information regarding right to peace. It does not secure right to peace, but comes with solution in case of a threat of interrupting peace¹⁵. According to this Act, appropriate obligations may be also imposed on offices and state institutions, e.g. consisting of a dictation of usage of their properties and chattels for the purpose of preparing the defence (*Ustawa o powszechnym obowiązku obrony Rzeczypospolitej Polskiej*, 1967). Secondly, *Ustawa o obrocie z zagranicą towarami, technologiami i usługami o znaczeniu strategicznym dla bezpieczeństwa państwa, a także dla utrzymania międzynarodowego pokoju i bezpieczeństwa* (2000). This act regulates rules of foreign trade of goods, technologies and services of a strategic significance for national security and for the maintenance of international peace and security.

Conclusions

Though the elimination of war and armed conflict “has been a political and humanitarian objective of the global community [...], that objective remains unachieved” (Perry et al., 2015, p. 148). In the opinion of Michael Freeman (2007, p. 158), the rule and practice of a sovereign state of law causes serious barriers in implementation of international human rights standards. And international law of human rights is a result of a political process. Freeman underlines other important thing; that States are often criticized for inconsistent following of human rights, but such an attitude may result from not only changes in perception of national interests but also from a selective public opinion in accordance to human rights (Freeman, 2007, p. 159). Anna Potyrała (2013, p. 266) indicates one more interesting aspect: peace needs to be understood as power/authorization and not as utopian idea. However, even though international society of NGOs and different associations made an effort to accept the right to peace, most members of UN and European Union are restrained about that (Potyrała, 2013, p. 266). According to Adam Łopatka(1991, p.37), peace may not be the most precious value in international and national relations, and there might come situations when armed conflict is the only way to secure peoples life¹⁶. And at

¹⁵ “Obligation of personal services may be imposed in connection with military exercises, exercises in the units to be militarized, civil defense exercises and practical exercises in the field of universal self-defense”(*Ustawa o powszechnym obowiązku obrony Rzeczypospolitej Polskiej*, 1967, Article 200 Paragraph 3).

¹⁶ Adam Łopatka states, that peace may have a different value, and there are circumstances when peace does not equal peace and different goods, such as life, freedom and independence mean more than peace.

that moment we stagger the will and go back to 1980, when Stanisław Kawula (1980, p. 99) wrote that shaping people's attitudes towards the acceptance of a life in peace was by that time one of the important goals of international education. Despite the passage of many years, this assumption did not become obsolete.

It seems then, that all above shows theoretical aspect of the issue, because in practice Poland does not play a role of an exemplary country in the matter of providing and securing the right to peace. 'Abstaining' by Polish government while signing the Resolution A/HRC/RES/23/16 as well as declaring inability in recognition human right to peace caused by lack of definition of the term peace in international law, shows not only the lack of good will but also the attitude to the role that human rights play within the State. It may seem ironic, if not puzzling, that Poland as a host of a meeting of OEWG in Oświęcim in 2013 instead of increasing its engagement in protection and adaptation of human rights, remained somehow silent observer instead of becoming a driving force (Potyrała, 2013, pp. 267–268). Unfortunately, it doesn't seem there will come an important change in perception of a right to peace, as long as countries (e.g. Poland) will not change their attitude to this issue (2013)¹⁷. In accordance to this, one more thing needs to be underlined. Anyone who asks if there is any logic and sense in defining every phenomenon, will somehow be right. Indeed, there is no such a need. Situation changes when we talk about right to peace. As long as right to peace is a fractional part of human rights, it cannot exist separately from them. Especially, that – following Adam Łopatka (1991, p. 39) – “while consolidating peace, we provide the realization of other human rights”. Therefore when we define other elements, we need to define its basis, which is right to peace. We cannot realize other human rights, if their ground is not secured. Right to peace is no longer only an objective right, but becomes a subjective right. In that case defining right to peace would give a possibility to demand this right to be guaranteed by State. Today it is not possible to claim this right before court (Łopatka, 1991, p. 42). Once defined it would result in becoming something obligatory for the State (Redelbach, 2000, p. 7). As far as I am concerned, none State will take such a risk. Therefore, we talk about a right to peace which is not yet strictly a right but also no longer a privilege.

¹⁷ Poland was one of the countries *abstaining* while signing the Resolution A/HRC/RES/23/16 as well as Poland declares “inability to recognize the human right to peace because of the lack of definition of the term ‘peace’ in the applicable acts of international law”.

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