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## **Restrictions on Movement During the Covid-19 Pandemic in the Light of Constitutional Freedom of Movement in the Republic of Poland**

**Keywords:** limitation of constitutional rights and freedoms, the Constitution of the Republic of Poland, prohibition of freedom of movement, Covid-19 epidemic

**Słowa kluczowe:** ograniczenia konstytucyjnych praw i wolności, Konstytucja RP, zakaz przemieszczania się, epidemia Covid-19

### **Abstract**

The aim of the publication is to present the key issues regarding legal forms of restrictions on freedoms and rights (especially freedom of movement) without the simultaneous introduction of one of the constitutional states of emergency during the Covid-19 pandemic in the Republic of Poland and their assessment in terms of compliance with the Constitution. An important issue is the restriction of freedom of movement by the executive without proper authorization by statute. Despite the lack of the authorization in question, the Minister of Health introduced a ban on movement under the provisions of the executive act, which is contrary to Art. 92 sec. 1 of the Polish Constitution<sup>2</sup>, pursuant to which the bodies indicated in the Constitution of the Republic of Poland are authorized to issue the ordinance on the basis of statutory delegation. Moreover, in the light of Art. 31 sec. 3 of the Constitution of the Republic of Poland, restrictions on the exercise of constitutional freedoms and rights, including the right to move (Art. 52 of the

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<sup>2</sup> Constitution of the Republic of Poland of April 2, 1997 (Dz.U. No. 78, item 483 as amended).

Polish Constitution), may be established only by statute, therefore the regulation of the matter in question by means of a sub-statutory act, without proper authorization in the provisions of the act, violated a number of provisions of the Constitution, which means that in the event of failure to observe the statutory form for restrictions on freedoms and rights, it must lead to the disqualification of a given regulation as being contrary to Art. 31 sec. 3 of the Polish Constitution<sup>3</sup>.

## Streszczenie

### **Ograniczenia w przemieszczaniu się w dobie pandemii Covid-19 w świetle konstytucyjnej wolności poruszania się**

Celem publikacji jest przedstawienie kluczowych zagadnień, dotyczących prawnych form ograniczeń wolności i praw (szczególnie wolności przemieszczania się) bez jednoczesnego wprowadzenia jednego z konstytucyjnych stanów nadzwyczajnych w dobie pandemii Covid-19 w Rzeczypospolitej Polskiej i ich ocena pod kątem zgodności z Konstytucją. Istotną kwestię stanowi reglamentacja wolności przemieszczania się przez władzę wykonawczą bez właściwego upoważnienia w ustawie. Pomimo braku przedmiotowego upoważnienia Minister Zdrowia wprowadził zakaz przemieszczania się na mocy przepisów aktu wykonawczego, co jest sprzeczne z art. 92 ust. 1 Konstytucji RP, zgodnie z którym do wydania rozporządzenia upoważnione są organy wskazane w Konstytucji RP w oparciu o delegację ustawową. Ponadto w świetle art. 31 ust. 3 Konstytucji RP ograniczenia w zakresie korzystania z konstytucyjnych wolności i praw, w tym prawo przemieszczania się (art. 52 Konstytucji RP), mogą być ustanawiane tylko w ustawie, w związku z czym regulacja przedmiotowej materii w drodze aktu podustawowego, bez właściwego upoważnienia w przepisach ustawy, naruszyło szereg przepisów Konstytucji, co oznacza, że w przypadku braku zachowania ustawowej formy dla ograniczeń wolności i praw prowadzić musi do dyskwalifikacji danego unormowania, jako sprzecznego z art. 31 ust. 3 Konstytucji RP.

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<sup>3</sup> Judgments of the CT: of May 19, 1998, file ref. no. U 5/97; of January 12, 1999, file ref. no. P 2/98; of January 12, 2000, file ref. no. P 11/98; of July 13, 2011, file ref. no. K 10/09, OTK-A 2011; of July 19, 2011, file ref. no. P 9/09, OTK-A 2011.

**I.**

Undoubtedly, it was necessary for states to introduce extraordinary legal measures to stop the development of the pandemic. The observance of the key principle in this process, the principle of maintaining social distancing, has resulted in the limitation of some constitutionally guaranteed civil liberties. Most countries introduced states of emergency. For example, the Hungarian government introduced by a decree one of the states of emergency (Hungarian *veszélyhelyzet*; the equivalent of the Polish martial law). Pursuant to Art. 53 of the Hungarian constitution, the government may introduce a state of emergency in the event of a natural disaster, suspending the application of certain normative acts, withdraw from the application of selected legal provisions, as well as introduce other extraordinary measures. In such a situation, the rights and fundamental freedoms are suspended as a result of the ‘higher good’, which may have consequences in the form of their significant limitation.

Austria, despite a relatively high incidence rate in relation to the country’s population, did not introduce a state of emergency<sup>4</sup>. The Austrian government introduced restrictions in such a way that they violate as little as possible of the civil liberties and freedoms guaranteed by the European Convention on Human Rights. The most important act was the Federal Epidemiological Act, which listed compulsorily notifiable diseases, the occurrence of which entitles the application of extraordinary preventive measures<sup>5</sup>.

In the case of Italy, which introduced a state of emergency, the Council of Ministers was empowered by the Constitution (Art. 77) to issue a decree-law as necessary and urgently without the need for prior parliamentary delegation. The government submits the issued ordinance to the Houses in order to transform the ordinance into law.

The French parliament introduced a state of emergency in 2020. It authorized the government to take action to counter the pandemic. The ordinanc-

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<sup>4</sup> The state of emergency was also not introduced by Croatia, Denmark, France, Greece, the Netherlands, Ireland, Malta, Germany, Poland, Slovenia and Sweden.

<sup>5</sup> K. Dobrzeniecki, B. Przywora, *Legal basis for introducing restrictions on human rights and freedoms during the first wave of the Covid-19 pandemic*, “Review of European and Comparative Law” 2021, vol. XLVI, iss. 3, p. 58.

es issued by the Prime Minister after the entry into force of this ordinance should therefore be considered compliant with the principle of legality.

It should be emphasized that laws passed by parliaments or subordinate laws were the main legal instrument in many countries to counter the pandemic. Some state constitutions do not provide for a state of emergency at all, and in some cases the authorities have not decided to declare it despite the formal possibility. Undoubtedly, the states tried to adapt their actions to the current level of threat. Regardless of the mode of introducing the state of emergency, public authorities were granted special powers, which resulted in qualified restrictions on the rights of an individual.

## II.

Article 2 of the Polish Constitution defines the Republic of Poland as a democratic state ruled by law, which indicates not only the democratic form of government, but also confirms that this state should implement the rule of law.

In a state governed by the rule of law, the Constitution specifies the requirements for states of emergency. The Polish Constitution regulates this issue in Art. 228 sec. 1, stating that extraordinary measures may be introduced only by regulation, issued upon the basis of statute, and which shall additionally require to be publicized (Art. 228 sec. 2 of the Polish Constitution). The principles for activity by organs of public authority as well as the degree to which the freedoms and rights of persons and citizens may be subject to limitation for the duration of a period requiring any extraordinary measures shall be established by statute (Art. 228 sec. 3 of the Polish Constitution).

The problematic issue is the possibility of applying constitutional restrictions on freedoms and rights without introducing one of the constitutional states of emergency, because as it results from Art. 228 sec. 3 of the Polish Constitution, the scope of limitations of the rights and freedoms in question, even during a state of emergency, must result from the provisions of the statutory rank. As the Constitutional Tribunal has repeatedly emphasized, constitutional rights and freedoms may only be limited by statute<sup>6</sup> – wherein the

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<sup>6</sup> T. Sroka, *Ograniczenia praw i wolności konstytucyjnych oraz praw pacjenta w związku z wystąpieniem zagrożenia epidemicznego*, "Palestra" 2020, no. 6, p. 76.

statute must precisely define the shape of these restrictions – without leaving the executive authority more freedom in this regard<sup>7</sup>. Thus, the Constitution of the Republic of Poland introduces the principle of the exclusivity of the act limiting the constitutional rights of citizens<sup>8</sup>. Therefore, it is unacceptable to adopt blanket regulations in the act, which leave the executive authority the freedom to regulate the final shape of these restrictions, and in particular to define the scope of these restrictions<sup>9</sup>. It should be emphasized that counteracting the threats specified in Art. 228 sec. 1 of the Constitution, obliging to specific principles of the functioning of the state and specific limitations of human rights, should be implemented through the legislation of states of emergency<sup>10</sup>.

### III.

There is no doubt that the pandemic caused by the SARS-CoV-2 virus in 2019 poses a particular threat, giving rise to the introduction of a state of emergency<sup>11</sup>, however, the competent organs of state authority did not decide to introduce it<sup>12</sup>. Instead, a decision was made in the form of the

<sup>7</sup> Cf. Judgment of the CT of January 12, 2000, file ref. no. P 11/98, OTK 2000, iss. 1, item 3.

<sup>8</sup> The judgment of the Supreme Court of May 5, 2021, file ref. no. II KK 106/21. See also: M. Ławryniewicz-Miklasiewicz, *Koncepcja istoty wolności i praw jednostki oraz aspekt formalny ich ograniczenia*, "Przegląd Prawa Konstytucyjnego" 2014, no. 4, p. 77.

<sup>9</sup> See also the judgment of the CT of: January 12, 2000, file ref. no. P 11/98; February 18, 2014, file ref. no. K 29/12; June 28, 2000, file ref. no. K 34/99, OTK 2000.

<sup>10</sup> See also P. Kardas, *Konstytucyjne podstawy rozstrzygnięcia kolizji obowiązków i konfliktów dóbr w czasie epidemii*, "Palestra" 2020, no. 6, p. 11; M. Kazimierczuk, *Ograniczenie wolności i praw człowieka podczas stanu wyjątkowego w polskim prawodawstwie*, "Polski Rocznik Praw Człowieka i Prawa Humanitarnego" 2018, no. 9, p. 112.

<sup>11</sup> The Covid-19 pandemic is a natural disaster under Art. 232 of the Polish Constitution "In order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster, the Council of Ministers may introduce, for a definite period no longer than 30 days, a state of natural disaster in a part of or upon the whole territory of the State. An extension of a state of natural disaster may be made with the consent of the Sejm".

<sup>12</sup> In Poland, all material premises for a state of natural disaster occurred, but the Council of Ministers did not issue an appropriate regulation and did not declare a state of natural disaster.

adoption of the Act of March 2, 2020<sup>13</sup>, which has become the basic legal act against combating the Covid-19 pandemic in the Republic of Poland. The act in question introduced a number of changes to the Act of December 5, 2008<sup>14</sup>, inter alia, it allowed for the possibility of designating the endangered area together with the type of zone in which the epidemic or epidemic threat occurred and the type of solutions applied by the Council of Ministers by way of an ordinance in the event of an epidemic or epidemiological threat<sup>15</sup>.

Although the Council of Ministers did not use the statutory authorization in question, on March 20, 2020, the Minister of Health issued a regulation on the declaration of an epidemic in the territory of the Republic of Poland<sup>16</sup>. Moreover, the legislator in Art. 46 sec. 4 point 1 of the Act on the preventing and combating infections and infectious diseases, allowed for the establishment of temporary restrictions on a specific method of movement in the area where an epidemic threat or epidemic was announced.

Article 46 sec. 4 point 1 of the Act on preventing and combating infections and infectious diseases introduces the right of the minister competent for health matters to define a temporary limitation only with regard to a specific method of movement and not movement as such. This type of formulation of the statutory authorization undoubtedly allows movement during the epidemic, while pointing to possible restrictions only as to the manner of movement. A literal interpretation of the provision leads to the conclusion that the minister responsible for health does not have the power to introduce travel bans. Moreover, the Act of December 5, 2008 does not contain regulations specifying the possibility and conditions for limiting the constitutional freedom of movement within the territory of the Republic of Poland, therefore legal acts of a lower rank than the Act may not limit this freedom of move-

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<sup>13</sup> Act of March 2, 2020 on special solutions related to preventing of and combating Covid-19, other infectious diseases and crisis situations caused by them (Dz.U. item 374).

<sup>14</sup> Amendments to the Act of December 5, 2008 on preventing and combating infections and infectious diseases in humans (Dz.U. 2019, item 1239 as amended), introduced on the basis of Art. 25 of the same act.

<sup>15</sup> Art. 46a of the Act of December 5, 2008 on preventing...

<sup>16</sup> The Regulation of March 20, 2020 on the declaration of an epidemic in the territory of the Republic of Poland (Dz.U. item 491, 522, 531).

ment guaranteed in Art. 52 sec. 1 of the Polish Constitution<sup>17</sup>. On the other hand, by authorizing the Council of Ministers to establish specific measures in the field of freedom of movement, the Act referred to restrictions on the manner of movement itself (without prohibiting it, however). Despite the unequivocal regulation of the aforementioned measures, the Council of Ministers introduced a ban on movement on the basis of the provisions of executive acts, including the regulation of March 31, 2020<sup>18</sup> or the regulation of April 19, 2020<sup>19</sup>, which, to the extent that they limited the freedom of movement of citizens throughout the country, violated the regulation of Art. 52 sec. 1 in connection with Art. 31 of the Act and 3 of the Polish Constitution, because they did not contain a reference to a specific provision of the Code, nor did they specify the substantive consequences of violating the provisions contained therein, which directly affected the requirement of specificity in the law in terms of specifying the sanctions threatening the person violating such a norm<sup>20</sup>.

Despite the lack of statutory authorization, the minister competent for health has introduced a ban on movement within the territory of the Republic of Poland in the period from March 25, 2020 to April 11, 2020<sup>21</sup>. This provision is in clear contradiction to Art. 46 sec. 2 and 4 of the Act on the preventing and combating infections and infectious diseases and with Art. 92 sec. 1 of the Polish Constitution, according to which regulations are issued by organs specified in the Constitution on the basis of a detailed authorization contained in a statute and for the purpose of its implementation. Thus, exceeding the scope of statutory delegation in fact

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<sup>17</sup> H. Zięba-Zalucka, *Wolność przemieszczania się w ustawodawstwie międzynarodowym i polskim*, „Przegląd Prawa Konstytucyjnego” 2013, no. 2, p. 36.

<sup>18</sup> The Regulation of March 31, 2020 on the establishment of certain restrictions orders and bans in connection with the outbreak of an epidemic (Dz.U. item 566).

<sup>19</sup> The Regulation of April 19, 2020 on the establishment of certain restrictions orders and bans in connection with the outbreak of an epidemic (Dz.U. item 697).

<sup>20</sup> The Regulation of the Council of Ministers of April 19, 2020 on establishing certain restrictions, orders and bans in connection with the outbreak of the epidemic was in force until May 16, 2020.

<sup>21</sup> Pursuant to §3a sec. 1 of the Regulation of the Minister of Health of March 24, 2020 amending the regulation on the declaration of an epidemic in the territory of the Republic of Poland (Dz.U. item 522).

results in the lack of a basis in the Act and the adoption by the regulation of a form unknown and unacceptable by the Polish Constitution. Violation of these conditions together or at least one of them makes the regulation incompatible with the Act, and thus cannot be a source of an obligation for citizens and, consequently, a basis for punishment for non-compliance with this obligation<sup>22</sup>.

Article 92 sec. 1 of the Polish Constitution excludes the admissibility of creating provisions of the executive regulation against its substantive solutions, which would lead to the creation of provisions bearing the features of an independent legal norm<sup>23</sup>. It should be emphasized that pursuant to Art. 31 sec. 3 of the Polish Constitution, restrictions on the exercise of constitutional freedoms and rights, and thus the right to move (Art. 52 of the Polish Constitution), may only be established by the act<sup>24</sup> and only when they are necessary in a democratic state for its safety or public order, or for the protection of the environment, health and public morals, or the freedoms and rights of other people, which means that it is not possible to limit constitutional rights and freedoms without statutory regulation<sup>25</sup>. Consequently, §3a sec. 1 of the regulation on the declaration of an epidemic in the territory of the Republic of Poland also violates Art. 31 sec. 3 of the Polish Constitution.

Thus, the minister regulated the matter related to the constitutional freedom specified in Art. 52 sec. 1 of the Polish Constitution and in Art. 2 sec. 1 of Protocol no. 4<sup>26</sup>, without being authorized to do so in the act. Admittedly, this freedom may be subject to limitations, but only specified in the law. In

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<sup>22</sup> See the judgments of the Supreme Court of: May 5, 2021, file ref. no. II KK 106/21; May 27, 2021, file ref. no. II KK 65/21.

<sup>23</sup> See the judgment of the CT of May 27, 2014, file ref. no. U 12/13.

<sup>24</sup> See judgments of the Provincial Administrative Court in Warsaw of: November 26, 2020, file ref. no. VII SA/Wa 49/20; January 12, 2012, file ref. no. VII SA/Wa 1545/20; January 14, 2021, file ref. no. VII SA/Wa 1566/20. See also: J. Węgrzyn, *Wolność przemieszczania się*, [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 232.

<sup>25</sup> P. Wiliński, *Proces karny w świetle Konstytucji*, Warsaw 2011, p. 272; the judgment of the CT of November 11, 1998, file ref. no. K 39/97.

<sup>26</sup> Protocol no. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Strasbourg on September 16, 1963 (Dz.U. 1995, no. 36, item 175).



an epidemic, which is not the state of emergency described in the Constitution of the Republic of Poland, the constitutional condition of restricting this freedom applies, and a regulation of the Council of Ministers cannot be considered such a normative act. These arguments are reflected in the numerous case law of the Supreme Court<sup>27</sup>.

In the light of Art. 52 sec. 1 of the Polish Constitution freedom of movement as well as the choice of place of residence and sojourn within the territory of the Republic of Poland shall be ensured to everyone, while Art. 46 sec. 4 point 1 of the Act on preventing and combating infections and infectious diseases allows only the restriction of the manner of movement, and not the introduction of a prohibition of movement. Going further, it may be concluded that the aforementioned §3a sec. 1 of the regulation restricts the freedom of movement within the territory of the Republic of Poland on the basis of the regulation, which in the matter in question is not empowered by statutory provisions, and therefore is unacceptable. Moreover, the comparative analysis of Art. 46a and Art. 46b point 12 of the Act on preventing and combating infections and infectious diseases leads to the conclusion that this type of prohibition of movement cannot be introduced also by the Council of Ministers, because the latter has only the right to introduce an order for a specific method of movement. There is therefore no power to prohibit movement.

In the authorization contained in art. 46b points 2–12 of the Act, there are no guidelines for regulating orders, prohibitions, restrictions and obligations. Statutory authorization to issue a regulation within the scope of Art. 46b of the Act does not contain guidelines concerning the content of the regulation issued on this basis<sup>28</sup>. The content of the authorization contained in Art. 46b shows that in the regulation, the Council of Ministers may establish limitations, obligations and orders referred to in Art. 46 sec. 4. The authorization in this respect therefore includes only a reference to the limitations, obligations and orders specified in Art. 46

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<sup>27</sup> The judgment of the Supreme Court of: March 16, 2021, file ref. no. II KK 97/21; March 16, 2021, file ref. no. II KK 64/21; March 24, 2021, file ref. no. II KK 66/21; April 8, 2021, file ref. no. II KK 96/21; June 11, 2021, file ref. no. II KK 226/21.

<sup>28</sup> Judgment of the Provincial Administrative Court in Kraków of January 26, 2021, file ref. no. III SA/Kr 924/20.

sec. 4, i.e. only to a specific scope of this provision and does not include the conditions for introducing these limitations, obligations and orders<sup>29</sup>. Regulation of the Council of Ministers, issued pursuant to Art. 46a and art. 46b points 1–6 and 8–12 of the Act on preventing and combating infections and infectious diseases in humans does not therefore meet the constitutional condition of its issuance on the basis of a statutory authorization containing guidelines on the content of the executive act. In the wording of the above-mentioned statutory authorizations, the legislator did not include any guidelines concerning the matter submitted for regulation in the challenged regulation.

Thus, the indication of the state of emergency, epidemic, rules of operation of state organs and limitation of constitutional rights was included not in statutory provisions but in an ordinance, which proves an “unconstitutional legislative mechanism”. Confirmation of this state can be seen in the lack of introduction of a state of natural disaster in the Republic of Poland, despite the existing obligation, resulting from Art. 228 sec. 1 and Art. 232 of the Constitution. Undoubtedly, this type of situation entitles the organs of state authority only to act within the framework of ordinary restrictive clauses, standardized in the Constitution of the Republic of Poland, which refer to circumstances of particular threat. Therefore, the failure to introduce a state of emergency results in the incompatibility of restrictions on rights and freedoms with the Constitution of the Republic of Poland, as it includes the implementation of restrictions based on a regulation without appropriate statutory grounds. Moreover, the offenses of entities that do not comply with prohibitions and orders cannot be sanctioned, because there is no legal basis to bring them to justice due to the lack of a threat of a sanction.

As P. Tuleja rightly points out, counteracting a pandemic is indeed the responsibility of public authorities<sup>30</sup>, however, its implementation is dif-

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<sup>29</sup> Judgment of the Provincial Administrative Court in Szczecin of December 11, 2020, file ref. no. II SA/Sz 765/20.

<sup>30</sup> Art. 68 sec. 4 of the Polish Constitution „Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment”. On the subject of Art. 68 sec. 4 see J. Węgrzyn, *Realizacja normy programowej wynikającej z art. 68 ust. 4 Konstytucji RP w stanie epidemii Covid-19 (uwagi ogólne)*, „Przeгляд Prawa Konstytucyjnego” 2021, no. 3, p. 148.

difficult or even impossible with the use of ordinary measures at the disposal of public authorities when limiting constitutional rights based on the requirements of Art. 31 sec. 3 of the Constitution, therefore measures of action, within the meaning of Art. 228 sec. 1 of the Polish Constitution, oblige to implement special solutions in the scope of activities of state organs and to introduce special types of restrictions on constitutional rights<sup>31</sup>, because a citizen may not be punished for exercising a constitutional freedom that has not been limited in accordance with the standards set by the Constitution (here from: Art. 52 sec. 1 and sec. 3 in conjunction with Art. 31 sec. 3). The Supreme Court confirmed<sup>32</sup> that the Council of Ministers had no authority to introduce, under the regulation, a general prohibition of movement, because the introduction of this prohibition exceeded the limits of statutory delegation and violated the principle of exclusivity of the law in restricting the constitutional freedoms and rights of citizens. In the opinion of the Supreme Court, the legislature does not have the power to introduce a general prohibition of movement, while the Constitution allows for such a possibility only after the introduction of a state of natural disaster (Art. 233 sec. 3)<sup>33</sup>. It seems justified to believe that Art. 233 sec. 3 of the Polish Constitution allows for the introduction of restrictions in extraordinary circumstances, particularly threatening public safety and health, which may justify the violation of the essence of the rights and freedoms specified therein. On the other hand, Art. 31 sec. 3 of the Constitution seems to confirm the introduction of restrictions necessary for the normal functioning of the state.

Moreover, by issuing a general ban on shipment in the regulation, the statutory delegation on the basis of which the regulation was issued was exceeded<sup>34</sup>.

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<sup>31</sup> P. Tuleja, *Pandemia Covid-19 a konstytucyjne stany nadzwyczajne*, „Palestra” 2020, no. 9, p. 8.

<sup>32</sup> The judgment of the Supreme Court of May 12, 2021, file ref. no. II KK 47/21.

<sup>33</sup> Cf. P. Uziębło, *Odpowiedzialność organów władzy państwowej i ich członków za niekonstytucyjne ograniczenia praw i wolności jednostki w czasie stanu zagrożenia epidemicznego i stanu epidemii*, „Przegląd Konstytucyjny” 2021, no. 1, p. 13.

<sup>34</sup> The judgments of the Supreme Court of: June 29, 2021, file ref. no. VK K 245/21; May 12, 2021, file ref. no. II KK 82/21; April 8, 2021, file ref. no. KK 75/21; May 5, 2021, file ref. no. II KK 121/21; April 29, 2021, file ref. no. 11 KK 135/21.

#### IV.

The introduction of the pandemic in the Republic of Poland resulted in the rationing of a number of citizens' rights and freedoms. The organs of the executive power decided to implement ordinary clauses, specified in the Constitution of the Republic of Poland, appropriate for the functioning of the state and its organs in the ordinary course, instead of launching solutions appropriate for the constitutional emergency, which is undoubtedly the state of the Covid-19 pandemic. Moreover, it should be emphasized that the Constitution regulates only the issue of an ordinary state and a state of emergency, without providing for any 'intermediate states', however, the current circumstances, i.e. the fulfillment of the conditions for the introduction of a state of natural disaster, with the simultaneous failure to introduce a state of natural disaster by the Council of Ministers, can be described as 'hybrid extraordinary state', confirming that the existence of the material premises of the state of emergency updates certain constitutional orders and prohibitions, regardless of the lack of declaration of such a state in accordance with the provisions of Art. 228 sec. 2 of the Constitution. On the other hand, undoubtedly, the fact that the Council of Ministers has not introduced a state of emergency does not release public authorities from the obligation to prevent and combat specific threats, which means the obligation to protect the society against the occurring threats while respecting the rights within the meaning of Art. 31 sec. 3 of the Constitution, which is synonymous with the prohibition of interference by public authorities in human rights with the exceeding of the limitation clauses specified therein (Art. 31 sec. 3)<sup>35</sup>.

Taking into account Art. 31 sec. 3, Art. 52 sec. 1 or Art. 92 sec. 1 of the Polish Constitution, the organs of the executive power could not introduce the prohibition of movement in an effective and legally correct manner, even in a situation where it would contribute to the effective reduction of the state of emergency, because the Constitution of the Republic of Poland (Art. 31 sec. 3) does not provide, apart from emergency measures, possible interference by public authorities with constitutional rights and freedoms<sup>36</sup>.

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<sup>35</sup> P. Tuleja, *op.cit.*, p. 6.

<sup>36</sup> Art. 46a and Art. 46b of the Act of December 5, 2008 on the prevention and combating infections and infectious diseases in humans contain only the authorization to introduce

Undeniably, the Constitution of the Republic of Poland contains sufficient grounds for the introduction of a constitutional state of natural disaster<sup>37</sup> during the Covid-19 pandemic. Its introduction would allow the public authorities to respond to the threats related to the Covid-19 pandemic in a more optimal manner, especially when the elimination of these threats would require the introduction of constitutional rights restrictions that go beyond the requirements specified in Art. 31 sec. 3 of the Constitution<sup>38</sup>. On the other hand, the introduction of such a far-reaching restriction of the constitutional right to move, in a state of formal non-application of the state of emergency, leads to a number of doubts as to the constitutionality of the commented provision and the possibility of applying sanctions for its violation<sup>39</sup>.

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temporary restriction of a specific method of movement and an order for a specific method of movement, which means that the legislator, implementing the prohibition of movement instead of restricting the mode of movement, took actions inconsistent with statutory delegation, which violate the freedom guaranteed in Art. 52 sec. 1 of the Constitution and constitute acts of legislative arbitrariness.

<sup>37</sup> K. Eckhardt, *Stan nadzwyczajny jako instytucja polskiego prawa konstytucyjnego*, Przemysł–Rzeszów 2012, p. 68.

<sup>38</sup> P. Tuleja, op.cit., p. 9.

<sup>39</sup> F. Morawski, *Zakaz przemieszczania się w związku z pandemią Covid-19 w świetle konstytucyjnego prawa do poruszania się*, "Przegląd Prawa Publicznego" 2020, no. 9, p. 9.

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