

Security and Public Order in Polish Public Law

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Abstract. *In this paper the author discusses the position and role of security and public order in the Polish public law system. The division into public law and private law included is not the first. It is derived from the work of Ulpian, and was later included in the Digest of Justinian. Its further development, depending on the region, accepted political ideology and the philosophy of law, took on a different shape, determining the way of perceiving the law. It should be assumed that the concept of separation between public law and private law is the domain of substantive law, and its application is primarily found in scientific digressions. The considerations are of theoretical nature, pointing to the scope of application of the concept of security, which is wrongly equated with the concept of public order, in various legal acts ranging from acts in law and international law, through executive acts, to local law and internal ordinance regulations. These have recently shown a dramatic increase in the role of security and public order in the decision-makers and legislators conceptions. Despite the importance and demand for the good of public security and public order, which is at the same time one of the basic functions of public administration, the legislator has only presented this issue in a fragmented way, referring only to particular areas of law which, despite use by numerous judicators, still raise some doubts in respect of interpretation. In the area of the issue discussed, the author also points to the tendency of blurring the boundary between the sphere of public law and the sphere of private law, in particular by dislocating public service provision in the field of public security and order, to paid for services provided by private parties in this area. The result of this synthesis is a partial indication of the dangers resulting from differences in the constitutional guarantees of private and public law.*

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1. Introduction

Since the dawn of history the problem of security has been the subject of active analytical, cognitive and practical activities. Security is one of the most common concepts of everyday life. Thus, the concept of security is connected with the existence of man and his forms of coexistence in the international and local community, as well as individual human existence. This term is used in many scientific disciplines and laws. The modern concept of security is ambiguous. Security as a desirable and valued positively condition is the subject of many human interventions.¹ The hierarchy of human needs has been presented in the most readable and unambiguous manner by the traditionally cited A. Maslow², according to whom the need for safety, in addition to the physiological needs, is the basis and foundation of the functioning of every human being, thus defining these values as the needs of the first order.

¹ Stańczyk J, Contemporary Security Concept. Warsaw, 1996, p. 12.

² See: Maslow A, A Theory of Human Motivation. *Psychological Review*, 1943, Vol. 50.

2. Public Law

The subject of public law is the organisation of the state and its dependent legal entities, as well as the organisation of their relations with individual persons. It consists of many branches: constitutional law, administrative law, criminal law, financial law (public finances) and canon law.³ On the other hand, the subject of private law is the relationship between private persons, including natural persons (collectively and as individual persons) as well as legal entities.⁴ Public law aspires to autonomy in the legal system. It differs not only from the system of norms for private entities, but it is also equipped in its own source system, which is mutually hierarchic, applicable, if not to all, then at least to some administrative actions and it is recognised outside the judicial power through internal control mechanisms that can obtain the status of jurisdiction only in a progressive way.⁵ The division into public law and private law included is not the first. It is derived from the work of Ulpian⁶, and was later included in the Digest of Justinian.⁷ Its further development, depending on the region, accepted political ideology and the philosophy of law, took on a different shape, determining the way of perceiving the law. It should be assumed that the concept of separation between public law and private law is the domain of substantive law, and its application is primarily found in scientific digressions.

The existence of public law distinct from private law, understood as a set of specific rules applied in the administration as a separate branch of law, is the quality present in all legal systems, including *common law* systems. The functioning of the state and of the public administration in liberal democracies is unthinkable today without a legal framework, or without a law that at least in part is not the same as that referring to private relations. It concerns public law, which has a weighting that varies from one country to another.⁸ The *Summa divisio* between public law and private law, sometimes questioned, is maintained and characterised by the features attributed to it by the political-institutional history that underlies this separation and determines its nature, properties and character.⁹

³ See: Dębiński A, Roman private law. Compendium. Warsaw, 2007, p. 29.

⁴ See: Lemonnier M, Public Law and Private Law. Legal-Comparative Observations under French Law. *Legal-Economic Studies*, 2016, t. C, pp. 67–68.

⁵ *Ibid.*, p. 69.

⁶ Gnaeus Domitius Annius Ulpianus — living at the turn of the second and third century — Roman jurist and writer, prefect of the Praetorians and one of the chief advisers of the emperor Alexander Severus. His work significantly influenced the shape of the codification of Roman law undertaken by Emperor Justinian I the Great. He was one of the five great Roman legal authorities whose writings were equated with the laws of the ravanian constitution. — See: Bojarski W, Dajczak W, Sokal A, Verba Iuris, rules and cases of Roman law. Toruń, 1995.

⁷ Iustiniani Augusti Digesta seu Pandectae — the most elaborate part of the great codification of Roman law (collection of opinions of outstanding Roman lawyers) taken in the years 528–534 by Emperor Justinian I the Great.

⁸ Gaudemet Y, Gaudemet S, Editorial, Rev. de Droit Henri Capitant, No. 30, Lexbase 2012, after M. Lemonnier, Public Law..., *op. cit.*, p. 69.

⁹ Savatier R, Droit privé et droit public, Chronique. Dalloz, 1946, p. 25.

3. The Concept of Security and Public Order

Although the notion of public security and public order are not identical, in the subject literature they are almost inseparable. As J Dobkowski observes, in principle, all authors who deal with the meaning of these concepts consider them unclear, imprecise, incomplete, ambiguous, terminologically inaccurate, and as a result difficult to define and delimit. In Polish legislation, as well as in the context of community law, these concepts are defined and used in an unspecified, blurred, ambiguous, legally undefined and evaluative manner.¹⁰

The etymological term of security comes from the Latin term *securitas*, which in turn derives from the words *sine cura* and means as much as a state without custody. In English, it is the word *security* (security, protection) and *safe* (1. safe means that a mechanical device protects itself without the need for continuous custody and supervision, 2. safe, 3. secure). The first concerns more social, interpersonal and subjective relationships, while the other is more material and instrumental. The genesis of the English word *safe* is sought in Latin *salvus* — sound or healthy, whole, safe, untouched, saved — and *salutis* — health, safety, greetings — and *salutis* — health, happiness and prosperity, salvation and rescue, good and the whole.¹¹ The literal interpretation of the notion of security has been presented in the Polish dictionary¹² and means a state of being without harm, of peace, and of certainty.¹³

Security, as the defined and common understanding of this concept, has long been equated with a state that guarantees the certainty of existence and survival. At present, such a view is questioned as too narrow or conservative. In the new approach, security is meant not only to guarantee the inevitable survival of a given entity but also its freedom to develop.¹⁴ This is the definition of security, contained in the Dictionary of Civil Defence Terms¹⁵, in which security is a condition that gives a sense of confidence and guarantees its maintenance as well as the chance to develop. One of the basic needs of man is a situation characterised by a lack of risk, the loss of something that a person particularly appreciates, such as health, work, respect, feelings or material goods. There are, among others, global, regional and national security, military, political and communal security, physical, mental and social security and structural and personal security.

Of course, this is not a full listing, and it now seems impossible to create a closed-end catalogue of the types of security because the development of civilisation

¹⁰ Dobkowski J, Administration of Security and Public Policy on European Integration (selected comments), [in:] Ura E, Rajchel K, Pomykała M, Pieprzny S (Eds), Internal Security in a Contemporary State. Rzeszów, 2008, pp. 159–160.

¹¹ Swiniarski J, Internal Security in a Philosophical Perspective, [in:] Grochowski L, Letkiewicz A, Misiuk A (Eds), Safety Science. Essence, object of research and directions of development. Study and materials. Tom I. Szczytno, 2011, p. 122.

¹² See: Szymczak M (Ed.), Polish Language Dictionary, PWN, Vol. 1. Warsaw, 1995, p. 139.

¹³ Brakoniecki D, Investigative Studies. Legal and functional aspects of detective activity in Poland and in the world. Warsaw, 2016, p. 159.

¹⁴ Majer P, Poland's internal security in historical development from the 10th century to the end of People's Poland. Szczytno, 2012, p. 9.

¹⁵ See: Borkowski J (et al.), Dictionary of Terms in Command and Management Psychology. Warsaw, 2000, p. 17.

creates new areas of social activity and generates threats in the areas that were previously free of such phenomena.

The concept of public security occurs in normative acts, both statutory and of a lower order. The scope of application of this concept by the legislature, in various legal regulations, is steadily increasing in the world due to the growing legal as well as social and political role of public security. It should be emphasised however that the notion of public safety, which is incidentally the most important task of the state and its most important function, has not been precisely defined in the law. In legal literature this issue is often presented in a fragmented way, referring only to particular areas of law. The legislator uses this term frequently in various regulations, however its scope is very often ambiguous. This creates considerable trouble in the interpretation of legal norms.¹⁶ Security and its protection are the subject of legal regulation in all branches of law. They occur in different contexts and in connection with many other phenomena. Under constitutional law, security appears as a separate object of protection, in food law as a sought-after feature of its subjects, in road traffic law it permits description of the correct behaviour of people in traffic situations, but in many other cases it is a prerequisite for the application of detailed rules and procedures. It can be seen that this concept is most often found in the branches of law that are included in public law: constitutional, administrative and criminal. Despite numerous rules, none of the regulations explains what security actually is.¹⁷ Therefore, when attempting to define the notion of security and public order in legal science, this should be done by indicating its designations, based on the judgments of the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court, as well as on the jurisdiction of the community and international tribunals.

4. Security and Public Order in Constitutional Law

The legal basis of Poland's internal security system is the Constitution of the Republic of Poland.¹⁸ In the general law, the concept of security occurs many times, including public security, state security, citizens' security, internal security, external security and ecological security. This multiplicity is due to the fact that security is the most important element of the functioning of the state.¹⁹

One of the first provisions of the Basic Law relating to security is Art. 5, which states that Poland protects the independence and inviolability of its territory, ensures human freedom as well as civil rights and the security of citizens, protects the national heritage and ensures environmental protection, guided by

¹⁶ Filaber J, Concept of public safety in administrative law (selected comments), [in:] Sadowski M, Szymaniec P (Eds), Legal, administrative and historical work, Wrocław Erasmus Studies. Student Handbook. Wrocław, 2009, p. 244.

¹⁷ Pomykała M, Safety as a category of law, [in:] Letkiewicz A, Misiuk A (Eds), State — Administration — Police. Commemorative book dedicated to Professor Kazimierz Rajchel. Szczytno, 2012, p. 87.

¹⁸ Constitution of the Republic of Poland from April 2, 1997 (Journal of Laws No. 78, item 483, as amended).

¹⁹ Filaber J, Concept of Public Security..., *op. cit.*, pp. 246–247.

the principle of sustainable development. This record is a specific foundation for the goals of the state, at the same time raising the importance of these values.

It is obvious that Poland, in the rule of law, provides in its Constitution guarantees of the security of goods as elemental as human life (Article 38), its freedom (Article 31), dignity (Article 30), personal inviolability (Article 41) and the ability to decide ones own destiny (Article 48). The area of these fundamental rights is supplemented with, for example, the prohibition of torture, cruel, inhuman or degrading treatment (Article 40), conduct of scientific experiments on people without their voluntary consent (Article 39), or securing freedom of communication and secrecy (Art. 49) or the inviolability of the home (Article 50). It is also worth mentioning the security guarantees in the area of private ownership, freedom of establishment (Article 20) and other property rights (Article 64), as well as protection of the safety of consumers, users and tenants (Article 76). The right to an independent, impartial and sovereign court (Article 45) and the prosecution and punishment of offenders (Article 42) guarantee the safety of these goods. Measures for the protection of freedom and rights are also contained in Art. 77–81, which envisage, among others, that everyone is entitled to compensation for the damage caused to him by an unlawful act of a public authority and that no one can close court proceedings in investigating infringements of freedom or rights.

The Constitution of the Republic of Poland also contains provisions on the guarantee of ideological security by banning the existence of political parties and other organisations that refer in their programmes to the totalitarian methods and practices of Nazism, fascism and communism, as well as those whose programmes allow racial and ethnic hatred, use of violence to gain power or influence state policy (Article 13). This record does not contradict the freedom of conscience and religion, the security of which is guaranteed by Art. 53 and Art. 48, as well as freedom of expression (Article 54).

The Basic Law also provides guarantees in the area of ecological security (Article 74 (1)), which a few decades ago was on the margins of social priorities, but nowadays is one of the increasingly pressing themes of debates and actions of government and citizens.

Public security is a constitutional value for the protection of which it is possible to limit the use of a citizen's constitutional freedoms and rights.²⁰ Such restrictions are included in Art. 45 sec. 2, excluding openness of hearing because of morality, state security or public order; In Art. 53 sec. 5, which provides for the possibility of restricting the freedom of expression of religion, when it is necessary to protect the security of the state, public order, health or morals, as well as in Art. 61 sec. 3, which permits the restriction of the rights of citizens to obtain information on the activities of public authorities on the grounds of the protection of public order, security or a legitimate economic interest of the state.

In addition, it should be pointed out that the limitation of rights and freedoms is permissible both when expressly permitted by the provisions of the Constitution and when there is a need for mutual harmonisation of individual rights or freedoms with other norms, principles or values expressed in the Constitution.

²⁰ Garlicki L, The rationale for limiting constitutional rights and freedoms (in the context of the case law of the Constitutional Court). *State and Law*, 2001, c. 10, p. 14.

Thus, state interference in the sphere of freedom and human rights can only take place in the context of its implementation of values protected by the Constitution.²¹ Undoubtedly, such a constitutional value, justifying the establishment of restrictions on the exercise of constitutional freedoms and rights, is public security, in addition to public policy, environmental protection, public health and morality and listed *expressis verbis* in Art. 31 sec. 3 of the Constitution of the Republic of Poland.²²

The security of a democratic state in the context of Art. 31 sec. 3 of the Constitution of the Republic of Poland is treated as a value which is a part of the public interest as a general determinant of the boundaries of an individual's freedoms and rights, and that public interest should not be equated with the state interest nor opposed to the duties of the individual. Each of the six categories of special interest listed in Art. 31 sec. 3 (security and public order, environment, health, property and public morality) should be defined on the basis of the axiom of the foundations of the Constitution. In addition, with reference to the principle of human dignity and the prohibition of discrimination., these must be serious enough to touch the fundamentals of the integrity of their territory, the fate of its inhabitants, or the essence of the system of government.²³ The Basic Act also indicates those state authorities particularly responsible for safety. First of all, the President of the Republic of Poland, whose tasks include, above all, ensuring the adherence of the Constitution, defending the sovereignty and security of the state as well as the inviolability and indivisibility of its territory (Article 126 (2)).

Identifying in the Constitution the right to safety and public order is an indication for addressees of legal norms in the direction of lawmaking, law enforcement, protection and control of constitutional law.²⁴ Admittedly, the Constitution in the subsequent articles uses quite varied terms, as has already been indicated. This does not mean, however, that only in the cases specified in the specific articles, security and public order are protected. Constitutional provisions clearly demonstrate that security and public order are related to the need to protect them, and the threat to that state justifies the taking of certain actions by authorities. Security is inseparably linked to the public tasks of the state and local government.²⁵

The legal norms containing these concepts do not explain their substantive content, which requires a doctrinal interpretation or a substantive law, the *lex specialis* closely related to the matter of the two regulated states. Without further elaborating on relations of "public security" and "public order" to concepts similar to those used in the legal texts of other branches of law, it appears that some of them should be mentioned. At this time, security and public order are values that are subject to constitutional protection. Concepts expressing these values, embodied in different legal contexts, are repeatedly referred to in the Constitution

²¹ Wojtyczek K, Limits of legislative interference in the sphere of human rights in the Constitution of the Republic of Poland. Kraków, 1999, p. 179.

²² Filaber J, Concept of Public Security..., *op. cit.*, pp. 247–248.

²³ *Ibid.*, p. 244 and the lit. cited there.

²⁴ Wołpiuk W, Public Interest as a Category of Constitutional Regulation in the Basic Law of 2 April 1997, [in:] Pikulski S, Dobkowski J, Pływaczewski W (Eds), Doctrinal and Systemic Change in Public Law. Studies dedicated to prof. Wincenty Bednarek. Olsztyn, 2002, p. 387.

²⁵ Pieprzny S, Protection of safety and public order in administrative law. Rzeszów, 2007, p. 83.

of the Republic of Poland. By analysing the content of the normative acts defining the tasks and competences of the various levels of the public administration, one can conclude that the issues covered by the terms “public security” and “public order”, used together or separately, also fall within their range of activity. A good example is the Department of Government Administration Act, which provides that the internal affairs department includes, inter alia, security and public order activities.²⁶

5. Security and Public Order in Substantive Administrative Law

In administrative law, the concept of security and public order appears in the context of laws and lower-level acts regulating security and public order issues in various areas of human activity. Essentially, these are the rules detailing the scope of tasks (in the area of public security and public order) for strictly defined entities, as well as their powers, limitations or revocation of the previously granted powers if they could jeopardise the interests in question. The regulations, apart from the provisions of the previously discussed Constitution, which illustrate this state, include the following:

- **Act of 4 September 1997 on sections of self-government administration**²⁷ — in accordance with Art. 5 point 24 within the framework of government administration the interior department is established, whose task is, on the basis of Art. 29 sec. 1, among others, protection of security and public order;
- **the Act of March 8, 1990 on municipal self-government**²⁸ — meeting the collective needs of the community belongs to the municipality’s own tasks, in particular those concerning public order and security of citizens and fire and flood protection, including the equipment and maintenance of the municipal flood protection warehouse;
- **Act of 5 June 1998 on county self-government**²⁹ — the district performs public tasks of a supra-communal character in the field of public order and security of citizens;
- **Act of 5 June 1998 on the self-government of the voivodship**³⁰ — self-government of voivodship performs tasks of a voivodship character defined by law, in particular in terms of public safety and order;
- **Act of 6 April 1990 on the Police**³¹ — The Police is a uniformed and armed formation serving the public and intended to protect the security of people and to maintain public security and order;

²⁶ Osierda A, Legal aspects of the concept of public safety and public order. *Studies of Iuridica Lublinensia*, 23/2014, pp. 101–102.

²⁷ (Journal of Laws of 2016, item 543).

²⁸ (Journal of Laws of 2016, item 446).

²⁹ (Journal of Laws of 2015, item 1445).

³⁰ (Journal of Laws of 2016, item 486).

³¹ (Journal of Laws of 2015, item 355).

- **Act of 28 January 2016 Law on Public Prosecutor's Office**³² — the public prosecutor's office is set up to guard the rule of law through prosecution of unlawful decisions, prosecution of crimes and legal assistance to the public;
- **Act of 9 June 2006 on Central Anti-Corruption Bureau**³³ — the CBA is a special service established to combat corruption in public and economic life, especially in state and local government institutions, and to combat activities detrimental to the security and economic interests of the state;
- **the Act of 24 May 2002 on the Internal Security Agency and the Foreign Intelligence Agency**³⁴ — the ABW is a special service established to protect the constitutional order of the Republic of Poland, while the AW is the governmental administration office competent in the field of external security of the state;
- **Act of 9 June 2006 on the Military Counterintelligence Service and the Military Intelligence Service**³⁵ — SKW and SWW are specialised services in matters of protection against internal and external threats to the defence of the Republic of Poland and the security and military capabilities of the Armed Forces of the Republic of Poland. They deal in turn with counter-intelligence and military intelligence;
- **Act of 24 August 2001 on Military Police and Military Order Agents**³⁶ — the Military Gendarmerie is a separate and specialised service of the Armed Forces of the Republic of Poland, whose activities consist in ensuring compliance with military discipline and protection of public order and prevention of offences committed in military areas and in Public places;
- **Act of 12 October 1990 on Border Guard**³⁷ — the Border Guard is a homogeneous, uniformed and armed formation designed to protect the state border at sea and on land, border traffic control as well as prevention of, and counteraction to, illegal migration;
- **Act of 29 August 2002 on martial law and the competences of the Supreme Commander of Armed Forces and the principles of its constitutional subordination to the organs of the Republic of Poland**³⁸ — in situations of a threat to state security, the Act provides for the limitation of civil rights and freedoms, by conducting searches of persons, homes, vehicles, aircraft, vessels and seizure of objects that may jeopardise the security of the state;
- **Act of 21 June 2002 on exceptional condition**³⁹ — which, in a situation of particular threat to the security of citizens, which cannot be removed through the use of ordinary constitutional means, provides for the possibility of introducing a state of emergency by the President upon request of the Council of Ministers;

³² (Journal of Laws of 2016, item. 177).

³³ (Journal of Laws of 2016, item 1310).

³⁴ (Journal of Laws of 2016, item 1897).

³⁵ (Journal of Laws of 2016, item 1318).

³⁶ (Journal of Laws of 2016, item 1483).

³⁷ (Journal of Laws of 2016, item 1643).

³⁸ (Journal of Laws of 2014, item 1815).

³⁹ (Journal of Laws of 2016, item 886).

- **Act of 20 March 2009 on the safety of mass events**⁴⁰ — the Act imposes a number of obligations on the organizers in the area of public safety and security, such as ensuring the safety of those attending the event, law enforcement, medical security, adequate technical condition of the buildings, together with the installations and technical facilities used in these installations, in particular fire and sanitary facilities. If the organizer fails to meet the conditions specified in the permit, the mayor issues a decision to stop the mass event, giving it immediate enforceability, and informing the competent province governor without delay;
- **Act of 29 August 1997 on the protection of personal data**⁴¹ — the data controller, in accordance with Art. 30 (2) refuses to share personal data from the data set with entities and persons other than those referred to in Art. 29, sec. 1, if it threatens the security of the state or security and public order. In addition, according to Art. 43 of the obligation to register a data set, authorities subject to state secrets for reasons of state security or public security and public order are exempted from data security⁴²;
- **Act of July 2, 2004 on freedom of economic activity**⁴³ — which allows for the addition of the statutory restrictions on economic freedom, as stated in its provisions, in the need to obtain concessions for the security of the state or citizens. It also permits the refusal to grant or limit its concession or the temporary suspension of concession and the withdrawal or modification of its concession due to the security of the state or its citizens⁴⁴;
- **Act of 17 May 1989 on the guarantees of freedom of conscience and religion**⁴⁵ — stating that individual or collective externalisation of one's religion or belief may be subject to the statutory restrictions only if it is necessary to protect public security, public health or morals or fundamental rights and freedoms of others. In addition, if the application for registration of a church or religious association contains provisions contrary to the laws protecting public security and order, health, public morality, parental responsibility or fundamental rights and freedoms of others, the registry authority shall issue a decision refusing entry in the register;
- **Act of 3 July 2002 Aviation Law**⁴⁶ — defining, inter alia, temporary restrictions on the availability of airspace due to state defence, public security, nature conservation or air traffic safety;
- **Act of June 13, 2003 on the granting of protection to aliens in the territory of the Republic of Poland**⁴⁷ — which refuses to grant asylum to a foreigner who poses a threat to the security of the state or public order or who has in the past been expelled from the territory of the Republic of Poland;

⁴⁰ (Journal of Laws of 2015, item 2139).

⁴¹ (Journal of Laws of 2016, item 992).

⁴² Filaber J, Concept of Public Security..., *op. cit.*, p. 257.

⁴³ (Journal of Laws of 2015, item 584).

⁴⁴ Pomykała M, Safety as a category of law..., *op. cit.*, p. 96.

⁴⁵ (Journal of Laws of 2005, No. 231, item 1965, as amended).

⁴⁶ (Journal of Laws of 2016, item 605).

⁴⁷ (Journal of Laws of 2016, item 1836).

- **Act of 21 May 1999 on weapons and ammunition**⁴⁸ — stating that gun licenses are not issued to, inter alia, persons posing a threat to themselves, public order or safety.

In the laws mentioned above, there are also terms that are close to the notion of security and public order, such as citizens' security, state security, internal security, public order, public peace, etc., making the laws in question unclear and there is more unpredictability appearing in them. The lack of uniform criteria, in this regard, has become a subject of debate, and many doctrinal representatives, among others, J Widacki⁴⁹, J Czapska⁵⁰ or J Filaber⁵¹ postulate the systematisation of these concepts.

An attempt to construct a legal definition of security was presented in the government draft of the Act of 21 August 2003 on Civil Security (the draft was not subject to debate by the Sejm). According to it, civic security is the state of the civilian environment and the environment in which citizens and their communities do not perceive threats to their existence or fundamental life interests because of the state's provision of formal, institutional and practical safeguards to secure socially acceptable levels of risk. Another parliamentary bill on the security of citizens and crisis management, submitted to the Sejm on 23 March 2006 and rejected at the Sejm on 24 August 2006, did not contain a definition of security, but only referred to the concept of the system of protection of citizens' security. This system consisted of a set of norms and legal guarantees and a way of organising public authorities and other legal entities, creating formal and practical conditions for the protection of citizens against life-threatening or material damage and minimising their effects as well as shaping a harmonious and balanced environment.⁵²

6. Safety and Public Order in Substantive Criminal Law

Security as a value appears also in the provisions of the Criminal Code.⁵³ General security (crime against public safety is regulated in chapter XX k.k.) and communication security (crime against security in communication in chapter XXI) designate a group of prohibited acts. The common feature of them is that they are aimed at security as a fundamental value⁵⁴. In this regard, there the division into offences against external security should also be pointed out:

- against the security of humanity and peace,
- against the Republic of Poland,
- against defence,

⁴⁸ (Journal of Laws of 2012, item 576).

⁴⁹ See: Widacki J (Ed.), *Polish Police System and Organization, and its functions and tasks in the protection of security and order*. Warsaw–Kraków, 1998.

⁵⁰ See: Czapska J, *Citizen Security. Study in the field of law policy*. Kraków, 2004.

⁵¹ See: Filaber J, *Concept of Public Security...*, *op. cit.*

⁵² Pieprzny S, *Police. Organisation and functioning*. Warsaw, 2011, pp. 31–32.

⁵³ Act of 6 June 1997 Criminal Code (Journal of Laws of 2016, item 1137).

⁵⁴ Pomykała M, *Safety as a category...*, *op. cit.*, pp. 94–95.

- offences under the military part of the Criminal Code,
- offences that compromise external security outside the code and crimes against internal security:
 - against public safety and security in communication,
 - against the trading of money and securities,
 - clerical offences,
 - offences against elections, public authorities, public officials,
 - crimes against information protection,
 - crimes against public order.

It can be said that it is security that is the independent object of protection. These regulations fulfil the basic purpose of criminal law, which is to set boundaries and provide tools to evaluate human behaviour in terms of their social harm.⁵⁵

In the doctrine of criminal law, there are certain doubts as to whether security (universal as well as communicational) is a separate legal item, so that its value is distinguished from others, or merely a collective category for determining values relevant to each subject. While depending on the particular context, specific protected items are life, health and human property.⁵⁶ A Marek emphasises that universal security is an item and that it is materialised in the provisions of the Penal Code, in which either the threat to the life or health of many persons or property is substantial, or that there is no indication of this, although it is undoubtedly a universal threat, i.e. affects a substantial, unspecified number of people and property on a significant scale.⁵⁷ Unlike G Bogdan who argues that these regulations serve the protection of differentiated legal items, which, depending on the actual situation, will be the life or health of many persons or property on a large scale. Universal security, which cannot be granted autonomous legal status, is merely a socially desirable state characterised by the absence of threats of significant value.⁵⁸ It seems that, in the context of criminal liability for the commission of the offences set forth in chapters XX and XXI of the Penal Code, there is no way to clearly separate security from the other values like life, health or property. Assuming that security is a state of confidence and peace, and respect for other values, it can be argued that security is a value that arises and depends on others. For this reason, the protection of the indicated provisions of the Penal Code is not only about life, health or property but above all about the state of certainty, peace and respect for those goods in the form of specific security.⁵⁹

Representatives of *criminal justice* argue that the concept of security means a state in which crimes are not committed, especially against life, health and property, and the notion of order — a condition in which offences are not committed. These concepts should be combined because, as the part of the *criminal justice* doctrine points out, their content overlaps in a certain area.⁶⁰

⁵⁵ *Ibid.*, p. 95.

⁵⁶ *Ibid.*

⁵⁷ Marek A, Penal Code. Commentary. Warsaw, 2007, p. 340.

⁵⁸ Bogdan G, Commentary on Art. 163 Criminal Code, LEX.

⁵⁹ Pomykała M, Safety as a category..., *op. cit.*, p. 95.

⁶⁰ Gozdor G, Privatization of Security — Ride, abstraction or a way to improve safety and public order? (Conference on Human Security — Educational Challenges of the 21st Century, Trzcianka-Smolarnia, 24–25 June 2004), p. 165.

7. Summary

In the regulations of many branches of law, the legislator very often refers to the category of security. The requirement of shaping real social relations does not allow us to rely on security as such, but rather demands that a regulated area of security be specified. The definition of security, which on the basis of particular studies is considered ambiguous, should be seen in the same way in the legal language. The legislator does not explain holistically how security can and should be understood, although in the context of individual legislation, such clarifications to specific entities or social relations are formulated. By extending the legal aspects of security and its protection, it is necessary to remember the versatility of this concept and to perceive it as a complex category, changing its meaning depending on which subject and object is being addressed.⁶¹ That is why the present solutions, combined with numerous judicial decisions and rich doctrine in this regard, appear to be sufficient to achieve the goals set out in the various laws.

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⁶¹ Pomykała M, *Safety as a category...*, *op. cit.*, p. 100.

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Streszczenie. Autor w opracowaniu podejmuje dywagacje nad miejscem i rolą bezpieczeństwa i porządku publicznego w polskim systemie prawa publicznego. Uwzględniony podział na prawo publiczne i prawo prywatne nie ma charakteru pierwotnego. Wywodzi się on z dorobku Ulpiana, a następnie zawarty został w Digestach Justyniana. Jego dalszy rozwój, w zależności od regionu, przyjętej ideologii politycznej oraz filozofii prawa przybierał różny kształt determinując sposób postrzegania prawa. Należy przyjąć, iż koncepcja rozdziału między prawem publicznym, a prawem prywatnym jest domeną prawa materialnego, a swoje zastosowanie odnajduje przede wszystkim w dywagacjach naukowych. Podjęte rozważania mają charakter teoretyczny, wskazując na zakres stosowania pojęcia bezpieczeństwo i błędnie utożsamianego z nim pojęcia porządek publiczny, w przepisach prawnych różnej rangi, począwszy od ustaw i prawa międzynarodowego, przez akty wykonawcze, kończąc na prawie miejscowym i wewnętrznych regulaminach porządkowych. Ukazują one, w ostatnim czasie, radykalny wzrost roli bezpieczeństwa i porządku publicznego w koncepcjach decydentów i działaniach ustawodawcy. Mimo rangi i zapotrzebowania na dobro jakim jest bezpieczeństwo

i porządek publiczny, którego zapewnienie stanowi jednocześnie jedną z podstawowych funkcji administracji publicznej, dotychczas ustawodawca jedynie w sposób fragmentaryczny przedstawiał to zagadnienie, odnosząc się tylko do szczególnych dziedzin prawa, które mimo licznych judykatów, nadal stwarza pewne wątpliwości interpretacyjne. W zakresie omawianego zagadnienia, autor wskazuje również na tendencje zacierania granicy między sferą prawa publicznego, a sferą prawa prywatnego, szczególnie poprzez wypieranie świadczeń usług publicznych w zakresie bezpieczeństwa i porządku publicznego, na rzecz płatnych usług świadczonych przez prywatne podmioty w tym zakresie. Wynikiem prowadzonej syntezy jest częściowe wskazanie zagrożeń wynikających z różnic w gwarancjach konstytucyjnych co do prawa prywatnego i prawa publicznego.

Резюме. В статье автор рассматривает место и роль безопасности и общественного порядка в системе публичного права. Разделение на публичное и частное право не имеет первичного характера. Источником данного разделения являются достижения Ульпиана, позже данная классификация была еще помещена в Дигестах Юстиниана. Дальнейшее развитие этого разделения, в зависимости от региона, принятой политической идеологии и философии права, приобретало различные формы, детерминируя способ восприятия права. Необходимо учитывать, что концепция разделения публичного и частного права относится к материальному праву и в основном находит свое применение в научных исследованиях. Данные рассуждения имеют теоретический характер, с указанием рамок использования понятия «безопасность» и ошибочно с ним отождествляемого понятия «общественный порядок» в разного вида законодательных актах, начиная с законов и международного права, через исполнительные акты, а заканчивая на местном праве и правилах внутреннего распорядка. Они указывают на значительный рост в последнее время роли безопасности и общественного порядка в концепциях директивных органов и деятельности законодателя. Несмотря на важность и потребность в благе, т.е. безопасности и общественном порядке, обеспечение которого является одновременно одной из основных функций публичной администрации, до сих пор законодатель лишь частично представляет данный вопрос, относясь только к определенным областям права, которые кроме многих постановлений судов, по прежнему вызывают сомнения в толковании этих понятий. Обсуждая данный вопрос, автор указывает также тенденции, касающиеся размывания границ между сферами публичного и частного права, особенно путем исключения оказания публичных услуг частными субъектами в сфере безопасности и общественного порядка. Результатом проведенного анализа является определение угроз, связанных с различиями в сфере конституционных гарантий, касающихся частного и публичного права.

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