

SUMMARY OF THE DOCTORAL DISSERTATION

Restrictive clauses from the European Convention on Human Rights and their implementation in the Polish legal order (on the example of the right to privacy)

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The layout of the work results from the subject of research and the assumed research goal. The dissertation, apart from typical elements such as introduction, ending and relevant lists, consists of six chapters, among which one can distinguish two parts: strictly theoretical (Chapters I-III), which deals with issues related to fundamental human rights issues, their limitations, general clauses and the margin of evaluation, and opening to practical issues (Chapters IV-VI), which deals with problems related to European Court of Human Rights jurisprudence, Polish legislation and the jurisprudence of the Constitutional Tribunal and other Polish courts.

The first chapter of the dissertation is of an introductory nature in it presented. The considerations begin to present various definitions of the concept of "human rights", their philosophical conditions and interdisciplinary character. Next, the genesis of human rights in two perspectives - theoretical and historic right as well as generations of human rights was presented. The chapter also presents the basic issues concerning the international protection of human rights and human rights in the internal legal order of the Republic of Poland. International protection of human rights are discussed in the first place due to the fact that it was created earlier than the protection of human rights in Poland in its current form. The authors of the Constitution of the Republic of Poland of 1997, creating a basic law, benefited from international achievements in the field of human rights protection, in particular from the Convention for the Protection of Human Rights and Fundamental Freedoms. Considerations in this chapter ends the analysis of the term "right to privacy", on which the author focuses later in the dissertation.

The doctoral dissertation concerns a specific subject scope, but for the purpose of theoretical analysis, it is also necessary to consider the issues that carry out the comparative character. With this in mind, in Chapter II, two spheres of comparison can be distinguished:

the first sphere concerns the list of limiting clauses with other forms of restrictions. Other constructions of restrictions, i.e. the prohibition of discrimination, property rights and restrictions resulting from art. 6 ECHR relate to the sphere of weighing values, but they take them completely differently. The test of necessity and legality in this case remains unchanged, but clear changes are visible in the test of purposefulness. The second sphere, on the other hand, can be treated as a positive sphere of limitations. In it, one can distinguish two approaches to restrictions, namely: narrower - presenting differences in limiting factors in the clauses contained in paragraphs 2 art. 8 - 11 ECHR, which contain restrictive clauses (it concerns mainly the test of legality and necessity) and wider - where there is no automatic duplication of limiting factors, but depending on the legal specifics of a given society, the restrictions are different. In any case, it should be examined whether the restriction is advisable or not. In addition, the structure of Chapter II makes it possible to discuss issues ranging from more general to specific, transition from national to international law, an indication of human rights restrictions in the form of clauses and other forms of restrictions. The tests of legality and necessity were discussed on the example of art. 8 sec. 2 ECHR, while the test of expediency on the example of all clauses - in order to show its diversity.

Chapter III presents the concept of the margin of appreciation. The considerations start with terminological problems concerning both the name and the definition of the concept of the margin of appreciation. Next, its genesis and indicated elements of the concept specific to the clauses from four libertarian articles were discussed. Turning from more general to specific issues, the concept of a margin of appreciation in matters related to art. 8 ECHR. Speaking of Chapter III, it must be emphasized that the essence of the Directive is the margin of appreciation to authorize restrictions on human rights. Entities authorized to exercise human rights restrictions in accordance with the adopted margin of appreciation are the European Court of Human Rights in Strasbourg - at the international level in the evaluation of the provisions of the European Convention on Human Rights and the legislator and entity applying the law at the national level. The measure of European axiology is the Court - it can limit the rights to a certain level. The European Court of Human Rights grants a margin of appreciation to national authorities. It can determine its range in a wider or narrower way. Narrowing the margin of appreciation causes that the state is more closely related to the standards developed by the Court, while providing a wider margin of appreciation for a given problem gives countries greater freedom of action. The discretion of the Court is used to determine the limits of state discretion. The use of the concept of a margin of appreciation for articles 8 to 11 of the ECHR is in fact dependent on the result of the legality test. The Court

first examines whether the interference was prescribed by law and only then, whether its purpose can be regarded as legitimate and whether it was necessary in a democratic society.

Chapter IV begins the practical part of the dissertation. Chapters IV - VI are interrelated. Their aim is to present the process of implementing European Court of Human Rights case law in the national law order, both at the legislative and adjudicational level. The European Court of Human Rights in cases examined against Poland also drew attention to the shortcomings of national law, that is why the standards resulting from its judgments should be reflected in national law - in legislation, in building normative bases based on ECHR jurisprudence and opinions of the Committee of Ministers.

Chapter IV focuses on the analysis of the judicial standards of the European Court of Human Rights in cases where the Court's most often found to infringe art. 8 of the Convention by Poland. It also discusses judgments regarding issues in which Polish legislation is contrary to Strasbourg standards, as well as the views of the Court on problems not yet covered by Polish law. This chapter reflects thematically in Chapter V. Without presenting the Court jurisprudence standards, it is not possible to assess the conformity of Polish law with art. 8 ECHR.

Chapter V of the dissertation is devoted to restrictions on the right to privacy in Polish law. It can be noticed that the considerations in this topic are discussed in a way reflecting the hierarchy of legal acts in the Republic of Poland. Therefore, the deliberations begin to present the clause in art. 31 (3) of the Constitution of the Republic of Poland. It is very similar in its content to analogous clauses included, among others in the ECHR (in Article 8 (2), Article 9 (2), Article 10 (2), Article 11 (2) of the Convention), provided that the restrictive clauses provided for in the ECHR always refer to specific rights and freedoms, and therefore have the character of specific limiting clauses in the sense understood here. Clause from art. 31 (3) of the Constitution of the Republic of Poland has a general character, i.e. it refers to all rights listed in Chapter II of the Polish Basic Law. In the following, the issues related to statutory legal acts are discussed. One can among them, several groups can be distinguished, namely: legislation that implements the Court's judicial standards in the scope of art. 8 (2) ECHR (determined by unfavorable ECHR jurisprudence, or being an autonomous decision of the legislator); legislation contrary to the Court jurisprudence standards and lack of provisions regarding restrictions on the right to privacy. A separate category is constituted by properly legislated Polish legislation that complies with Court adjudication standards in the scope of art. 8 of the Convention, which is also being improperly applied by law enforcement authorities.

The subject of Chapter VI are the limitations of the right to privacy in the jurisprudence of Polish courts. The considerations are presented by selected examples of Constitutional Tribunal judgments, the Supreme Court, common and administrative courts on issues related to issues discussed in Chapter V. These judgments were chosen taking into account various criteria: similarity of the subject matter, the facts of the case, application or non-use of the verdict in the judgment. 8 ECHR, or in the justification - Court's case-law standards. They are not as closely related to the issues discussed in the previous chapter as the judgments of Chapter IV, because it is not possible to discuss in Chapter VI all the issues raised in Chapter V. The reason for this is the diversity of decisions issued in the abovementioned matters, or their total lack. What draws attention above all is the inability to issue a final judgment in cases recognized on the basis of the anti-terrorist law, because it has entered into force relatively recently, and the evidence in such cases is most often covered by the classification. Moreover, not every decision on matters discussed in Chapter V are issued by a judicial authority. The reason is also the appeal against the appeal of the order on refusal of consent to the perception of a person being arrested with relatives who is settled in the course of the case.