

Security Regulations in the Constitution of the Republic of Poland

Abstract

The essence of understanding the concept of security is constantly expanding with the development of civilization with unknown threats and innovative ways of eliminating them. The aim of this paper is to present the security pillars in the Polish constitution, which include principles, institutions and legal mechanisms that are aimed at ensuring stability, protecting the sovereignty of the state and the rights and freedoms of citizens. The Polish Constitution of 1997 contains many key provisions that serve the function of protecting national and state security, both internally and externally. The idea of national security is as old as the state. The people who created the first community and state formation had from the very beginning an idea of their means of subsistence and protection against external and internal threats. In order to achieve and maintain the desired level of security, Poland, like other countries, uses instruments in the form of legal and material regulations. The security of the state and its citizens is an important pillar of public order in the state. The theoretical and legal method was used in this paper.

KEYWORDS: security, human, pillar, Constitution of the Republic of Poland, instruments

EWA JAKUBIAK – PhD in law, University of Lomza, ORCID – 0000-0002-7849-2880, e-mail: ejakubiak@al.edu.pl

MARIUSZ CHRZANOWSKI – PhD in law, University of Lomza, ORCID – 0000-0002-3072-971, e-mail: mchrzanowski@al.edu.pl

Psychologists place safety first in the hierarchy of human needs. The highlighting of this value is inextricably linked to the loss of human in the confusion of events, the misuse of information, indifference and the transformation of power systems in the world economy and politics. The category of threats not related to the human will is increasing, it often exerts and puts people in a situation that could have been avoided if there had been no lack of foresight and responsibility.

According to Janusz Stefanowicz, the modern age has brought with it a growing range of threats, parallel to the progress of civilisation, which has also changed the scope of our understanding of security.

In the past it was understood in purely military terms, but today it has expanded to include important non-military aspects – political, economic and ecological. Secondly, security theology has changed. Not only the primary will to survive, but also the protection of the welfare of the state and its citizens, the protection of freedom and identity – including political identity – constitute the functions of security policy. Finally, the relationship between national security and order, i.e. international security, is more important than in the past.^[1]

In the literature on the subject, it can be seen that the term security is now widely used and modified in all sorts of ways, with different definitions. Safety may concern: individuals, families, work, social groups, cultural, social, economic, raw material, energy, public, ecological, state, or national and international. In the literature, it can be seen that security concerns almost all objects, people and communities, giving an open list of types of security, for example: global, regional, national, military, economic, political, public, internal, social, physical, mental, structural, personal security, etc.

National security aspects are parameters from which it can be concluded that the security situation occurs in this country. Most often, the first and mandatory element of national security is related to military security or the state's ability to use military forces means protect its right to exist. At the same time, it is emphasized that the military is not the only element that can be used to characterize the level of national security.

¹ Janusz Stefanowicz, „Przedmowa,” [in:] *Współczesne pojmowanie bezpieczeństwa*, ed. Jerzy Stańczyk (Warszawa: ISP PAN, 1996), 7.

According to Bogdan Zdrodowski,

undoubtedly, politicians always have a real impact on state security, but the approach to security, its interpretation, or its typologies are the domain of scientists. The scientific achievements related to many aspects of the state and the nation from the perspective of the international and internal environment are already significant, but not yet fully established. For this reason, it is justified to maintain the discussion on the perception of security by those involved in this subject of cognition.”^[2]

According to Waldemar Kitler,

security is therefore – in a general sense – an internal trust, peace of mind, a certainty, properly or falsely justified in circumstances giving rise to grounds for concern. It is also a belief, better or worse justified, that in the face of various difficulties, weaknesses, challenges and threats, or at least their symptoms, the state of affairs – in which a given subject finds itself – allows it to feel safe^[3].

Then Ficoń claims that

security is an abstract and universal category and is used only in theory and in colloquial speech. In the practical activities of entities, this term always occurs with an indication of who personally or in what area it is applied subjectively or objectively.^[4]

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The Constitution of the Republic of Poland, like many constitutions of other countries, quite often uses the term security and its components. Security in the exercise of rights should undoubtedly be a particular concern

² Bogdan Zdrodowski, „Rozważania o bezpieczeństwie państwa,” [in:] *Od sztuki wojennej do bezpieczeństwa narodowego. Księga Jubileuszowa z okazji siedemdziesięciolecia urodzin prof. dr. hab. Jacka Pawłowskiego*, ed. Waldemar Kitler (Warszawa: Akademia Sztuki Wojennej, 2017), 587.

³ Waldemar Kitler, *Bezpieczeństwo narodowe RP. Podstawowe kategorie, uwarunkowania, system* (Warszawa: Akademia Obrony Narodowej, 2011), 22.

⁴ Ibidem, 9.

of the state for the citizens regarding their fundamental rights. The constitutional objectives of the Polish security policy are defined as follows^[5]:

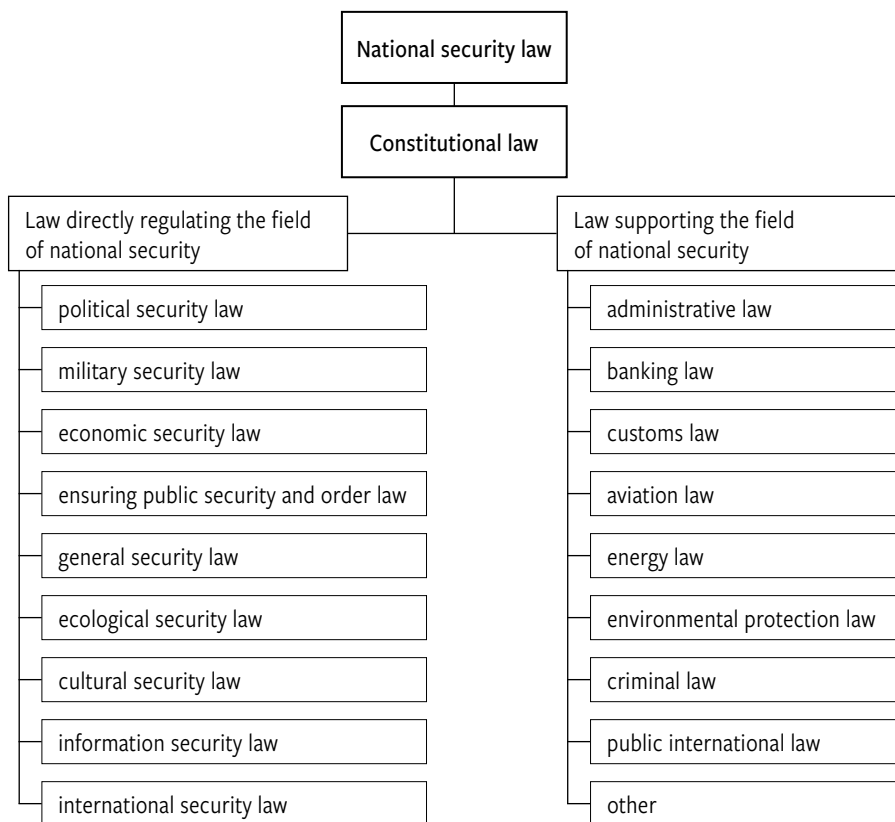
- “protection of the sovereignty and independence of the Republic of Poland;
- maintaining the inviolability of the country’s borders and territorial affiliation;
- guaranteeing the security of Polish citizens, human rights and fundamental rights of freedoms and democratic order;
- creation of undisturbed development for the economic and civilizational development of Poland along with the increase in the well-being of citizens;
- securing national heritage as well as national identity;
- fulfilling allied obligations, as well as defending and advertising the interests of the Polish state.”^[6]

Legal acts can be divided into: those relating to the field of national security and those regulating the tasks and competences of public administration bodies and referring to the type and scale of threats.

The Constitution is the basic system of state security, the most important legal act in Poland. Figure 1 shows the typology of the law regulating the issue of national security.

⁵ Janusz Gierszewski, *Organizacja systemu bezpieczeństwa społecznego* (Warszawa: Difin, 2013), 30.

⁶ Stanisław Koziej, *System bezpieczeństwa Rzeczypospolitej*, Vol. II, *Polityka i strategia bezpieczeństwa państwa XXI wieku* (Warszawa, 2004). www.koziej.pl. [accessed: 12.12.2024].

Figure 1. Typology of law regulating national security issues

Źródło: Waldemar Kitler, *Bezpieczeństwo narodowe RP. Podstawowe kategorie, uwarunkowania, system* (Warszawa: Akademia Obrony Narodowej, 2011), 15.

In the Constitution of the Republic of Poland of 2 April 1997, the issues of security and public order occupy a special place, and each state should take measures to guarantee and protect these values.

These are some of the main security pillars in the Polish Constitution:

1. Sovereignty and independence of the state (Article 5 of the Constitution of the Republic of Poland).
2. Article 5 of the Constitution of the Republic of Poland states that Poland is a sovereign and independent state. This means that national security is based on the independence of the country from external interference, as well as on the autonomy of decisions in internal and international affairs.

3. Protection of borders and territorial integrity (Article 5 of the Constitution of the Republic of Poland).
4. The Constitution also guarantees that the Polish state takes all necessary measures to ensure the inviolability of its borders and to protect its territorial integrity. This includes both the prevention of external aggression and the management of internal crisis situations that may threaten the integrity of the state.
5. Defence of the homeland (Articles 26-29 of the Constitution of the Republic of Poland)
6. According to Articles 26-29 of the Constitution, the defence of Poland is the responsibility of the state. Article 26 states that the Republic of Poland shall ensure the defence of the country by organising appropriate armed forces. In the event of a threat to the state, the president, as head of state, may declare martial law or a state of emergency, and the government has the right to take action to defend the country.
7. Armed forces and national defence (Article 26 of the Constitution of the Republic of Poland)
8. According to the Constitution of the Republic of Poland, there are armed forces in Poland, which are the basic tools of national defence. Article 26 specifies that the task of the armed forces is to defend the independence, sovereignty and territorial integrity of Poland. The armed forces are subordinate to the civilian authorities, and their structure and organization are regulated by law. The armed forces are the most important, irreplaceable and decisive tool of security policy and strategy that determines the effectiveness and national security^[7].
9. Defence capability (reserves and mobilisation) (Article 26 of the Constitution of the Republic of Poland)
10. The Constitution also indicates the need to maintain the state's defence readiness, which is associated with the system of reserves and mobilization. The government, in consultation with the president, decides to mobilize the armed forces if necessary.
11. International cooperation in the field of security (Article 9 of the Constitution of the Republic of Poland)

⁷ Jacek Pawłowski, Józef Marczak, Krzysztof Gąsiorek, "Pojęcie, charakter i uwarunkowania bezpieczeństwa narodowego (państwa)," [in:] *Podstawy bezpieczeństwa współczesnego państwa (podmiotu). Implikacje*, ed. Jacek Pawłowski (Warszawa: Akademia Obrony Narodowej, 2015), 19.

12. The Polish Constitution also provides for the obligation of international cooperation in the field of defence and security. Article 9 states that Poland may delegate part of its competences to international organizations, such as NATO or the European Union, to ensure common security. NATO membership and other international agreements are an important element of the Polish defence strategy.
13. Freedom to create and operate parties (Article 11 of the Constitution of the Republic of Poland)
14. The Republic of Poland shall ensure freedom for creation and functioning of political parties. Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of policy of the State by democratic means. The financing of political parties shall be open to public inspection.
15. Freedom of creation and operation of unions and organizations (Article 12 of the Constitution of the Republic of Poland)
16. The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, and other voluntary associations and foundations.
17. Ecological safety (Article 74 of the Constitution of the Republic of Poland).

Public authorities shall pursue policies ensuring the ecological security of current and future generations. Protection of the environment shall be the duty of public authorities. Everyone shall have the right to be informed of the quality of the environment and its protection. Public authorities shall pursue policies that ensure the ecological security of present and future generations. The provisions of Article 74 of the Constitution refer entirely to the protection of the environment and are the only ones in the applicable legal order that explicitly use the concept of ecological security. According to the content of this article, the public authorities must conduct such a policy that is to ensure ecological security for both current and future generations. However, Article 86 of the Constitution treats environmental protection as a civic duty, recognising that everyone is concerned about the quality of the environment and is responsible for causing its deterioration.

Commissioner for Citizens' Rights (Article 208-212 of the Constitution of the Republic of Poland). The Commissioner for Citizens' Rights acts as a guardian of freedoms and civil rights, including the protection of

citizens' personal security. In situations of threat to civil rights (e.g. during martial law, a state of emergency or a natural disaster), the Commissioner for Citizens' Rights has the right to intervene to protect the fundamental rights of citizens.

Constitutional review and the rule of law (Article 2 of the Constitution of the Republic of Poland). The principle of the rule of law is one of the basic pillars of security. It guarantees that all public authorities act in accordance with the law and that citizens have the right to protection against abuse of power. Constitutional review mechanisms, such as the Constitutional Tribunal, ensure that decisions taken by public authorities are constitutional and do not violate citizens' rights.

State of emergency (Articles 228-234 of the Constitution of the Republic of Poland). The Constitution provides for institutions of a state of emergency (emergency, war and natural disaster) which may be declared in crisis situations that pose a threat to the constitutional order, national security or public order. In this case, special provisions are introduced to limit certain civil rights, and the state takes extraordinary measures to restore security. In the *Encyklopedia prawa*, the concept of the state of emergency is defined as an institution of internal law consisting of withdrawing from the constitutional system of exercising power due to the emergence of a special threat to the state^[8]. The definitions of the state of emergency are currently dominated by the doctrine of constitutional law, which under the concept of the state of emergency means

the occurrence of a situation of particular threat to the state, the solution of which requires the implementation of such special measures as: concentration of power in the hands of the executive (head of state and government), restrictions on the rights and freedoms of citizens, changes in the structure and principles of functioning of state bodies, changes in the system of law-making.^[9]

Introducing regulations regarding a state of emergency to the Constitution of the Republic of Poland serves to combat the most serious threats to the security of the state and its citizens and is a positive solution.

⁸ *Encyklopedia prawa*, ed. Urszula Kalina-Prasznica (Warszawa: C.H. Beck, 2004), 767.

⁹ Lech Garlicki, *Polskie prawo konstytucyjne: zarys wykładu* (Warszawa: Liber, 2006), 407.

The constitutional regulations regarding states of emergency are therefore aimed at ensuring the effective functioning of the state in crisis conditions in the internal sphere and leading to the restoration of the previous state as soon as possible^[10].

The basic legal act regulating the issue of information security in the Republic of Poland is the Constitution of the Republic of Poland, whose Article 61 specifies the right of citizens to obtain information about the activities of public authorities and persons performing public functions, as well as local and professional self-government, as well as persons and organizational units to the extent that they perform the tasks of public authority and manage State Treasury and municipal property.^[11]

The right to a fair trial. “Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interests. The judgment shall be announced publicly”^[12] (Article 45 (2) of the Constitution of the Republic of Poland).

The National Security Council as an advisory body. “The advisory organ to the President of the Republic regarding internal and external security of the State shall be the National Security Council”^[13].

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Based on the Constitution of the Republic of Poland, it can be concluded from their content that the security system consists of the Parliament, the President of the Republic of Poland, the Council of Ministers and central government administration bodies. Their integral components are the armed forces, services, government institutions, local government units, non-governmental organizations and institutions and private entities aimed at preventing and counteracting threats. The provision of security is the responsibility of the State and its agencies, and the activities of other bodies in this area are auxiliary. The President – The Security Council

¹⁰ *System bezpieczeństwa i porządku publicznego. Organy i inne podmioty administracji*, ed. Kamil Sikora, Jerzy Stelmasiak, Marian Zdyb (Warszawa: Wolters Kluwer, 2025), 47.

¹¹ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 2009 No. 114, item 946).

¹² Ibidem.

¹³ Ibidem.

protects security, the Council of Ministers ensures the external and internal security of the state, the Parliament exercises legislative power, the ministries manage specific activities, and the local administrations are representatives of the Council of Ministers.

The modern state security system consists of: management bodies – defence management subsystem, Armed Forces – military subsystem, Non-military forces and elements. The subsystem of state security management can be defined as a set of interrelated elements of public authorities and heads of organizational units, they act to ensure the continuity of decisions and actions taken to maintain state security.

A detailed description of the individual parts of the system and, where appropriate, of the sub-systems, is the result of an analysis of the statutory responsibilities and the scope of duties of the public authorities.^[14] Guaranteeing the security of the state and its citizens is the main responsibility of public administration bodies. The reliable functioning of the state, as well as ensuring the balance of functioning and the possibility of free development, depends mainly on the proper implementation of tasks by the designated administrative entities, which are obliged to perform not only strictly defined skills and level of responsibility, but also voluntarily on the frequency, essence and nature of all challenges and threats.

As part of the conditions of systemic security, the Constitution of the Republic of Poland contains the system founding rules of the Republic of Poland. The following rules are particularly important here: a democratic state based on the rule of law, the implemented principle of social justice, the unitary nature of the country, the sovereignty of the nation, sustainable development, access to cultural heritage and the rule of law^[15]. In the field of security, the Constitution sets out the principle of the separation of legislative, executive and judicial powers. With regard to political security, it can be concluded that the Polish state is a stable democracy, which, despite crises and many shortcomings, has not been faced with events threatening its collapse. Law is a very important element of the systemic stability of the state. The state under the rule of law is a state that has all the required features, it can give citizens the feeling that in practice, any violation of the applicable rules will be met with a quick response to their

¹⁴ Janusz Gierszewski, *Bezpieczeństwo wewnętrzne. Zarys systemu. Zarządzanie bezpieczeństwem* (Warszawa: Difin, 2013), 51.

¹⁵ *Biała Księga Bezpieczeństwa Narodowego Rzeczypospolitej Polskiej* (Warszawa: Biuro Bezpieczeństwa Narodowego, 2013), 247.

needs. Security in Poland, in accordance with the Constitution, is multi-faceted and includes both border protection and sovereignty, as well as ensuring civil rights and respect for the rule of law. In turn, international cooperation, including membership in NATO and the EU, is an important element of the Polish defence strategy.

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