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THE LIMITS OF RIGHTS AND FREEDOMS - THE LIMITS OF POWER

Mirosław Wyrzykowski*

1. Preliminary Remarks

During work on the Constitution we had a chance to observe a peculiar paradox. On the one hand it is indisputable that citizens' rights and freedoms have left an impression on the systematic model contained in the Fundamental Act. This impression is so strong that it led to a concern whether the scope and guarantees of the rights and freedoms of citizens will not constitute an obstacle for the efficient functioning of the State. Concern was expressed that focusing on this issue resulted in lowered interest in structural and political issues. On the other hand, only some issues connected with citizens' rights and freedoms were subject to an in-depth discussion or caused disputes and controversies of an ideological and political nature. Those included, among others, such issues as the right to life from conception to natural death, or the scope and methods of regulating and exercising economic, social and cultural rights. This means that citizens' rights and freedoms, which in the 1944-1989 period constituted a source, and context of a struggle for a democratic and law-obeying state, quickly, and to some extent even unexpectedly gained the status of the indisputable and obvious matter. It also means that the level of understanding the content of the specific rights and freedom of the citizens is much higher that the understanding of many important values of the democratic system.

The constitutional regulation of citizens' rights and freedoms remains in accordance with the current standards of European constitutionalism. This relates both to the position of rights and freedoms in the constitutional system, which exerts influence on its interpretation and the content of individual rights and freedoms, both of material and procedural nature, and, finally, to the mechanism of exercising and protecting said rights and freedoms. The sources of the Europeans standard arise from the constitutional provisions of the individual countries as well as from the general agreement as to the minimum level of rights and freedoms, contained in international treaties. The influence of the constitutional regulations of the European countries on twentieth-century Central European constitutionalism is very differentiated. However, it is impossible to

* Professor of Public Law, Dean of the Law Faculty at Warsaw University, Head of Constitutionalism and Legal Culture Center by the Institute of Public Affairs, Warsaw.

overlook the clear impression left by the first chapter of the German Constitution, which *de facto* became a point of reference for all countries following the thorny path from totalitarianism to democracy. Not by coincidence have the Spanish, Greek or Portuguese legislators used the German example, and not by coincidence was the already classical formula of Article 14 of the German Constitution - ‘‘ownership obliges” - repeated in the constitutions of Central European Countries. The international standards include: the Covenants of Political, Social and Economical Rights and the European Convention on Human Rights, including the judicial verdicts of the Human Rights Tribunal and Commission in Strasbourg.

The legislators have recognised the rights and freedoms of citizens as the foundation of the Republic, subsequently confirmed by society in a constitutional referendum. Without aspiring to issue verdicts on the normative importance of the preamble to the Constitution, it is necessary to indicate that it was adopted for the purpose of rendering the dignity of human beings and their freedoms a directive for the activity of all authorities of the State and, primary, for the parliament, government and the courts. Human dignity and freedom were constitutionally recognised as the unalterable foundation of the Republic. This is a directive of positive activity understood as the principle that each authority should act according to its competence in such a way as to create conditions for the freedom of the individual and respect for his dignity to the furthest possible extent.

The scope of the free actions of the public authorities is limited, and the limits are established by, among others, a current understanding of the content of the particular rights and freedoms of the individual. Such a depiction remains in accordance with the present model of relations between the freedom of the actions of public authorities and the scope of protected freedoms and rights. The rule is simple: since no body of public authorities is absolutely free in the execution of its competence, since they are somehow “naturally” limited by the scope of the competence of other authorities, the rights and freedoms of the individual also do not possess an absolute nature and may be subject to certain limitations. At the same time, the essence of this relation is that the limitations of rights and freedoms are not only the limitation in exercising such rights by the individual, but, first of all, limitations for the public authorities, which may not be exceeded in any circumstances. If, however, the inviolable limits of the rights and freedoms are violated, then public authority may expect a specific sanction, which may assume the form of, for example, a declaration of a non-conformity of the normative act with the Act of Parliament and the Constitution, a declaration of the invalidity of the decisions, the quashing of the judicial decision or an order concerning compensation for damages suffered by the individual. The limits of actions and also omissions by the public authority have been defined rather precisely, not only in respect of space, in which the authorities may exercise their competence, but also in respect of sanctions, in the case such limitations are violated.

2. The Rule and the Exception

The freedom of the individual and the rights defined in the Constitution comprise the rule. The exception from this rule is the limitation of rights and freedoms. The normative consequences of this trivial statement are also trivial, but from the political point of view they do not have to be. Although it is clear for any lawyer that if the limitations of rights and freedoms are an exception from the rule, then any intentions of limiting them must take into account the inviolable rule of the strict, maximally restricted extent of such limitations. The exceptional nature of such limitations has been emphasised by the lawmakers by the double use of the limiting expression "only" (only by the Act of Parliament and only...), in conjunction with the adjective "necessary" (only when they are necessary in the democratic state, in order to..."). The restrictive understanding of this relation is derived from its essence; thus, the more restrictive the understanding of the meaning of the exception, the more proper the prerequisite for an interpretation of the rule. Is this rule, obvious for any lawyer, similarly understood by politicians as regards its importance and consequences? Observations of the lawmaking process, including the making of the Constitution, as well as the process of the application of law by public authorities does not allow for a similar judgment. Due to the specific nature of the prerequisites and the regulatory mechanism - both in the field of citizens' rights and freedoms and transfers in the field of competence of particular bodies of public authorities -1 do not delve into the issue of the limitation of citizens' rights in exceptional conditions and circumstances. Thus the rule of the limitation of citizens' rights and freedoms contained in Article 31 section 3 of the Constitution will possess fundamental meaning. This regulation defines the actual scope of the rights and freedoms of citizens, since, in fact, the legally permitted limitation of such rights and freedoms decides about their essence. On its part, by relating to a clause which defines the acceptable limits'of the rights and freedoms of the individual, similarly as with the majority of other norms, the prevailing regulation does not constitute a particularly original achievement of the constitutional idea. However, this is not a reproach but, on the contrary, praise of beneficial moderation in the search for "own" solutions, in a situation, when solutions existing in other legal orders have proven useful. In such cases, the reception of law, and certainly the reception of systematic concepts and constructions comprises the optimal behaviour of the system-makers.

3. Prerequisites for a Limitation of Rights and Freedoms

The reception, fortunately not formal, has already been made. By way of example, let us mention relevant provisions of the European Convention for Human Rights, constituting a reference point and evaluation criteria for all types of limitations in the Polish legislature. Hence in Article 31 section 3 the Constitution contains an already classical, three-part clause limiting the rights and freedoms of the individual. The first one relates to the formal basis of possible limitations, which may have any no other form than the

Act of Parliament. The second one relates to the circumstances permitting such a limitation, and the third one constitutes a guarantee of the inviolability of the essence of a particular right or freedom.

The requirement that the Act of Parliament be regarded as the formal basis of the limitation of the rights and freedoms of the individual is quite obvious. Due to the fact that we recognise the freedoms and rights of the individual as a constitutional matter, the Constitution itself must contain basic norms allowing for the limitation of rights and freedoms; secondly, it should include a detailed regulation on the limitations of particular rights and freedoms, which may be made by means of the Act of Parliament. A few reasons speak in favour of the necessity of using the Act of Parliament as the proper source of limitations. The Act of Parliament is the highest act in the hierarchy of normal legislature. It is adopted according to a procedure characterised by certain features. First of all, such procedure is public, allowing public opinion to learn about the assumptions of the regulations and to follow work on the final form of the Act. This gives public opinion as well as possible external observers a chance to react in the case of a risk that the permissible limitations of rights and freedoms may be exceeded. Additionally, the participation of the Senate in the lawmaking process and the role of the President in the process of the promulgation of the Act constitute a supplementary control element. In addition, the Constitutional Tribunal may be included into the mechanism of controlling the constitutionality of the Act, since the President, before signing the Act, may submit a motion for controlling the compliance of the Act with the Constitution. The requirement of the statutory regulations (by means of the Act of Parliament) acts as a guarantee for the individual, because the Act of Parliament is an act of a general nature. Moreover, the Act and only the Act may limit the rights and freedoms of the individual. The Parliament may not delegate its right to impose limitations upon any other authority, e.g. the government. This does not mean, however, that the government may establish a sub-statutory law, e.g. in the form of regulations. Nevertheless, a material change on the level of details contained in the acts - in order to fully regulate the limitations in the act - shall be assumed. It should be expected that under the new Constitution the regulations (statutory instruments) will not contain any norms limiting the rights and freedoms of the individual.

This is also the essence of the difference in the concept of the legal regulation of the status of the individual in comparison to the status existing before the new Constitution came into force.

The second part of the clause permitting the limitation of the rights and freedoms of the individual relates to the material prerequisites for limitation. First of all the limitations of rights and freedoms are permissible only when they are necessary in the democratic state. There is a little difference here from the content of the relevant clause contained in the European Convention, which does not mention a democratic state, but a democratic society. Let us recall that the judicial decisions of the Commission for Human Rights and the Tribunal for Human Rights allow for describing certain characteristics of the "democratic society." Namely, this is a society of a pluralism of views, behaviour and tolerance; from the political point of view, this is a society which con-

tains guaranteed political freedoms and rights of the individual as factors which moderate or reduce the character of the behaviour of public authorities. At the same time, this is a society in which each individual has a chance for development, and benefits from the guaranteed possibilities of such development, while the execution of rights and freedoms is safeguarded by the control institutions.

I think that the aesthetic approach contained in the constitutional expression concerning a democratic state, not conceived as "a democratic society", may be somewhat offensive. This is because the present standards of "freedom" do not relate to the state, due to the fact that it is recognised that a state respecting the basic rights and freedoms of the individual meets the minimum requirements of the democratic state, but rather to society, envisaged as the actual subject, whose interest must dominate over the freedoms and rights of the individual if there is no other way to resolve a conflict of values.

"Public order", as the next prerequisite for limiting the rights and freedoms of the individual, may be understood as a directive for such an organisation of public life, which may ensure the minimal level of consideration for the public interest. When discussing constitutional issues we may add that in Poland too public interest has been taken into account since Article 1 of the Constitution provides that the Republic of Poland is the common good of all its citizens. Additionally, public order assumes the organisation of a society based upon the values shared by this society. Those values should also include the universal rules of social justice, Society must agree as regards the necessity of introducing limitations of the rights and freedoms of the individual due to a universally accepted level of common well-being and the conditions of a proper organisation of society itself. Therefore, public order is co-defined by such elements as public safety and health, moral and aesthetic views or the economic system (e.g. as regards the protection of consumers).

"Public health" or "public morale" may also be a prerequisite for limiting rights and freedoms. It is especially difficult to define "public health" as a value more important than the freedoms and rights of the individual, although it is used in international conventions regulating human rights. This value has been accepted without special discussions and remains the least controversial prerequisite. In fact, the necessity to consider public health in a state of conflict with the rights and freedoms of the individual may mean, for example, the prevention of the transmission of a disease and the necessity to undergo a medical examination; such instances happen only in exceptional circumstances. In such cases, the application of provisions on extraordinary circumstances will allow limitations of the rights and freedoms of the individual other than "ordinary".

On the other hand, "public morals" may be understood as the set of rules of conduct, quite generally accepted in individual and collective behaviours, and based on the understanding of the notion of "morale" in the given period and society. The content of this notion is a product of many factors, such as culture, religion, tradition, education, tolerance, etc. It is conditioned by the time and place in which the meaning of such a notion is defined. However, this does not necessarily have to mean that attempts to define its content, made in different countries and at different occasions, have no influence on determining the essence of the notion of "public morals".

Each attempt to limit the rights and freedoms of the individual will undergo a test of proportionality. The rule of proportionality, a fundamental element constituting the essence of the democratic state of law as a political principle, must especially apply in cases of limitations of rights and freedoms. The test of proportionality means that it is necessary to answer the following questions. Firstly, is there a sufficient premise for introducing the intended results of the regulation. Secondly, is this regulation, which limits the rights and freedoms of the individual, really indispensable for the realisation of one of the indicated constitutional prerequisites. Finally, is the effect of the introduced regulation in appropriate proportion to the burdens imposed on the citizens. A joint answer to these questions will provide the basis for an evaluation of the appropriateness of using mechanisms which limit rights and freedoms.

Since exercising rights and freedoms is the rule, and its limitation is subject to restrictions appropriate for the exceptional situation, then the third element of the construction limiting the freedoms and rights, i.e. the guarantee of the inviolability of their essence, is a logical consequence thereof. Although it is an obvious logical consequence, it is fortunate that almost at the last moment the lawmaker decided to include into the Constitution a guarantee of the inviolability of the essence of said rights and freedoms. Such an inclusion of this guarantee into Article 34 section 1 of the Constitution was caused probably by the fact that a guarantee, with identical wording, was left in the provisions of Article 64 section 3, drawn up much earlier and stating that the limitation of ownership is possible only to such an extent which does not infringe upon the essence of ownership rights.

Analysing the limits of rights and freedoms one may not omit the differentiation of regulations concerning Polish citizens and other persons, not citizens of Poland but subject to the jurisdiction of public authority. By way of example, such limitations of rights concern the use of the constitutional complaint in cases of decisions on granting asylum or refugee status. This relates also to more or less obvious limitations in exercising political or social rights. Let us mention, once again by way of example, the citizens' right to vote, which in Europe undergoing unification becomes a universal right that does not depend on holding the citizenship of a given country, at least at the level of local elections.

4. The Remaining Criteria of a Limitation of Rights and Freedoms

The basic question relates to the permissible possibilities of the interpretation of the clause contained in Article 31 section 3 of the Constitution providing that "Any limitation upon the exercise of constitutional freedoms and rights may by imposed only by the Act, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons", from the point of view of the constructions contained in the provisions of Chapter II of the Constitution regulating the freedoms, rights and duties of persons and citizens. Even a superficial analysis of the particular

provisions contained in this chapter indicates that there are additional prerequisites for permitting limitations in the rights and freedoms of the individual. Apart from the above mentioned, which include the safety of the democratic state, public order, the protection of the environment, public health and morale, freedoms and rights of the others - the lawmaker allows limitations (or prohibitions) due to the "protection of the private life of the parties", "important legal interest of the parties", "inconsistency with the Constitution or with the Act of Parliament", "binding international agreements" or "the important economic interest of the state". For example, the right to obtain information on the activities of the public authorities and persons acting on public positions, the right of access to documents, or the right to witness the meetings of the collective bodies of public authorities, appointed as a result of general elections, may be limited exclusively owing to the protection of the freedoms and rights of other persons and business entities, as well as the protection of public order, safety or the important economic interest of the state, defined in the acts; thus, we have a complete list of bases for limiting the said right to obtain information. Therefore, it is impossible to limit the right to information with regard to public health or morale or the necessity to protect the environment. This means that the provision of Article 31 section 1 is applicable only in the part relating to the guarantee against the violation of the essence of the right to information (Article 31 section 3 sentence 2) and not in the part relating to the circumstances for its limitation (Article 31 section 3 sentence 1).

The authors of the Constitution introduced a specific gradation of the prerequisites for the limitation of citizens' rights and freedoms. The limits of public authorities' activity defined in Article 31 section 3 are addressed to those bodies, which exercise their lawmaking competence. Those are not the only limitations. An analysis of the constitutional norms contained in Chapter 1 of the Constitution indicates also other circumstances for the limitation of specifically described rights and freedoms. Thus, the freedom of establishing of political parties and their activities is limited by the observance of the principle of the equity of the citizens and the employment of democratic methods for shaping the policy of the state. Moreover, the Constitution prohibits the existence of not only political parties, but also other organisations which refer in their programmes to totalitarian methods and practices, Nazism, fascism, and communism, as well as those whose programme or activity permit national or racial hatred, the use of violence in order to gain power or influence the policy of the state, providing that their structure or membership may be classified.

On the other hand, the limitation concerning the establishment of professional self-governments representing so-called professions of public trust, is in public interest; the limitation of establishing other professional self-governments involves the freedom of practising a profession and the freedom to undertake business activity, which, in turn, may be limited only for reasons of important public interest. The similar condition of public interest, which also constitutes a limitation, is set for expropriation. Finally, limits of the official character of the Polish language are marked by the rights of national minorities stemming from ratified international treaties, whose provisions constitute part of legal order in the State and are directly applicable.

It seldom happens, however, that in the sphere of human rights the application of an international treaty is conditioned by the issuing of an Act of Parliament; even in such cases, the Act must be in conformity with the contents of the treaty, and in the case of a collision with the contents of the norms, the international treaty ratified with prior consent expressed in the Act of Parliament will prevail if it proves impossible to reconcile the Act with it.

A search for other constitutionally defined limits of citizens' rights and freedoms leads to the conclusion that the lawmaker made generous use of clauses permitting limitations. The right to an open court hearing may be limited - apart from the conditions listed in Article 31 section 3, i.e. the safety of the State and public order - for the reasons of morale, the protection of the privacy of the parties involved, or other important private interests. Morale, without the adjective "public", is also one of the prerequisites for limitations in manifestations of religion. Those are the subsequent, independent from Article 31 section 3, circumstances for the limitation of a specific constitutional right. The boundary which regulates the possibilities for the limitation of any right is also the application of the court procedure and the limitation of a right only upon the basis of a valid court judgment. This relates, first of all, to the limitation or rather deprivation of the ownership right in form of forfeiture, secondly - the limitation or deprivation of parent's rights, thirdly - to incapacitation or deprivation of public rights or the right to participate in elections. Limits for the public authorities related to the acquisition, archiving and making available of information about citizens are their indispensability, and such indispensability which is evaluated in categories relevant for the democratic state of law - an interpretation of this norm must take into account Article 2 of the Constitution. Finally, limitations for the duty of military service may assume the form of religious beliefs or subscribed moral rules, which do not permit a citizen to serve in the army, and may constitute a basis for directing a citizen to substitute service.

In three situations the content of the rights and freedoms is defined by means of a direct reference to the norms of international law. Therefore, the scope of the freedom to organise trade unions and organisations of employers and other union freedoms may be subject only to such statutory limitations which are allowed by international treaties binding in the Republic of Poland. Next, the above mentioned limitation of the official nature of the Polish language is based on the rights of national minorities, stemming from the ratified international treaties. Finally, the principle of the non-retroactivity of criminal law is limited, an exception from the rule, by criminal liability for the act, which at the moment of commission constituted an offence under international law. The reference to the norms of international law is important to such an extent as - according to the constitutional regulation - the ratified international treaty, after its publication in the *Journal of Laws*, constitutes part of the legal order, unless its application depends upon an Act of Parliament. It is known that most of the norms of international law relating to human rights are applicable directly. Moreover, the international treaty ratified with prior consent expressed in the Act has priority before the latter, if the Act cannot be reconciled with the treaty.

But happens if the Constitution does not provide directly a possibility for the limitation of a right, as in the case of the right of each person to the protection of private and family life, honour and good reputation as well as the right to decide about his personal life (Article 47 of the Constitution)? If we adopt the view that Article 31 section 3 applies only to those freedoms and rights, whose limitation is expressly and indisputably permitted by the Constitution by indicating that such a limitation is permissible, then we should conclude that the lawmaker did not make allowance for any possible limitation of the right of each person to the protection of his private or family life, honour and good reputation as well as the right to decide about his personal life. Since international law is applicable directly, and the relevant provision of the European Convention permits the limitation of this right, then this means that despite of the lack of an expressed permission for the limitation of rights specified in Article 47, the limitations introduced on the basis of Article 31 section 3 are permissible.

In order to avoid confusion, the Constitution must be read very carefully. Otherwise, if we limit our understanding of the expression "the exercise of constitutional rights and freedoms", contained in the limiting clause, as relating only to the freedoms and rights specified in Chapter II of the Constitution, entitled "The freedoms, rights and obligations of persons and citizens" then it will appear that such important political rights as, for example, the right to participate in elections, or economic freedom, should remain outside our scope of interest. Yet at least one aspect of the electoral law, i.e. the principle of equity, should be analysed from the point of view of the clauses limiting the rights and freedoms of the citizens. This principle is obviously violated in elections to the Senate.

I pointed out only a few issues relating to the status of the citizen in the democratic State. This status is also defined by limits in exercising rights and freedoms. The constitutional regulation, which is to constitute inviolable limits for actions of the public authorities, requires a sound interpretation. Such an interpretation must relate both to the constitutional norms, statutory regulations and the directly applicable norms of international law concerning human rights.

5. Addressees of Limiting Clauses

The boundaries of the limitations of the rights and freedoms of the individual, defined in the Constitution, apply to the activities of all bodies of public authorities. Thus, this clause is addressed to the Parliament, which is bound by those limitations in the lawmaking process. It is also addressed to all bodies of public administration and executive authorities applying the law, since the application of law should take into account directives contained in Article 31 section 3 of the Constitution. The limiting clauses are addressed to the courts in their capacity as bodies which control the appropriateness of the establishment and application of law, and as bodies administering justice - which may also mean a limitation of the freedom or rights of the individual. The understanding of the content of rights and freedoms by the bodies of the executive authorities and the administration of justice, an understanding which is co-defined by the limiting clauses,

will have fundamental meaning for the practical application of the Constitution to the sphere of the individual.

There exists a mechanism for controlling the abuse of the limits of the establishment and application of law. This is a mechanism that gives to the individual a right to initiate the control procedure. In the case of the abuse of law in the lawmaking process and an excessive limitation of freedoms or rights the individual may submit a complaint to the Constitutional Tribunal. This may happen in a situation, when the individual claims that his rights and freedoms have been violated by an Act of Parliament or a normative act, on whose basis a court or a public administration authority issued a final decision about its freedoms and rights, or duties defined in the Constitution. In cases when the right is abused in the process of its application, the individual may lodge a complaint to the court of administration or to the common court. If freedoms and rights have been violated by the decision of a court, the individual has the right of appeal to a higher instance, including a constitutional complaint.

6. Conclusions

The above indicated variety of the forms and scope of constitutional authorisation for limiting the freedoms and rights of the citizens may give rise to doubts as regards the relation between Article 31 section 3, sentence 1 of the Constitution and the other constitutional norms permitting such limitations. The analysed constitutional norms lead to the following conclusions:

Firstly - in all situation of constitutionally permissible limitations of citizens' rights and freedoms the limitation may be introduced only by means of an Act of Parliament. This rule is not waived, even the slightest extent, by the differentiated text of the constitutional authorisation. Regardless whether the legislator uses the authorisation "in the act", "by means of the act", "the act defines" or "defined by the act" - in all cases is an Act of Parliament the only legal form for limiting rights and freedoms.

Secondly - if the constitutional norm generally authorises the legislator to limit freedoms and rights without indicating the prerequisites for such limitation, then only the prerequisites defined in Article 31 section 3 sentence 1 shall apply. On the one hand, the legislator may not take into account any other prerequisites, but on the other hand the occurrence of only one of the prerequisites contained in this norm is sufficient for limiting the rights and freedoms, if necessary.

Thirdly - the statutory regulation must be subject to the "test of necessity" of the limitation of rights and freedoms. The appropriate application of a given prerequisite, scope of limitation, its relation to the essence of a given freedom or right is subject to an ordinary evaluation of the control of law, performed by the citizen (also by means of the constitutional complaint) and by the bodies controlling the appropriateness of the law making process.

Fourth - the use of imprecise notions by the authors of the Constitution imposes on the law establishing bodies and bodies administering and controlling the appropriate-

ness of the establishment and application of law, the duty of due diligence in defining the content of this notion. The rules of reconstructing the context of general clauses must be applied with special diligence owing to the fact that general clauses and imprecise notions are the basis for exceptions from the rule.

Fifth - there is an obvious systematic depiction, i.e. the constitutional norm relating to public wellbeing should be interpreted in the context of Article 1 (common wellbeing).

Sixth - in cases when the authors of the Constitution did not provide a possibility of limiting rights and freedoms (e.g. contained in Article 47 of the right to the legal protection of private or family life, honour and good reputations as well as a right to decide about hiss personal life,) but the norms of international law, directly applicable in the Polish legal system, allow such limitations, then the limitation in Polish law may not be more restrictive than that permitted by international law. The interpretation of the content of the norms provided by international law must obviously take into account the content of the decisions issued by adjudicating bodies, in particular the Commission for Human Rights and the Tribunal of Human Rights in Strasbourg.

Seventh - the rights and freedoms for which the possibilities of limitation were not provided and for which there is no such possibility permitted by international law, may not be subject to limitation (e.g. the prohibition of tortures).

Eighth - each case of limitations, also those defined by the acts regulating states of emergency, still apply the guarantee of the inviolability of the essence of a given freedom or right, contained in Article 31 section 3 sentence 2 of the Constitution.

Ninth - the limitations of rights and freedoms are subject to control by the constitutional authorities of the state and in the process of international control, initiated in particular due to the violation of rights and freedoms guaranteed in the European Convention for Human Rights.

Tenth - the limits of the rights and freedoms of citizens are the function of the essence of the given freedom or right. The content of all citizens' rights and freedoms requires redefinition due to axiological assumptions contained in the Polish Constitution. Also the content of particular prerequisites for the limitation of rights and freedoms calls for redefinition. Since the citizen gained a new status in the sphere of public law, while the nation, understood in the political sense of the notion as a community of citizens, became an actual sovereign, and the organisation and functioning of the state are based upon the principles defined in the Chapter entitled "Republic", then the interpretation of any norm regulating the freedoms and rights of citizens should take into account the new constitutional context to an even greater extent considering that the current model of legal regulations is, in fact, a model of the rights and freedoms of the citizens.