

RIGHT TO PRIVACY IN THE MARCH CONSTITUTION OF POLAND OF 1921 AND ITS BILLS

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1. INTRODUCTION

The national legislator for the first time noticed the need for legal protection of the matter that *in spe* would change into the concept of “the right to privacy” in the period of the Second Polish Republic. On the one hand, it resulted from the circumstance that at the earlier stage of history the matter remained outside the scope of the legislator’s interest (the period of the First Polish Republic). Then the legislator did not have an opportunity to issue legal acts (the period of the Partitions of Poland). On the other hand, the increase in the importance of human rights dictated it. However, what is characteristic, the noticed need was expressed in the content of the proposed and adopted basic laws. In the above-presented context, attention should be paid to the fact that the legal materialisation of the discussed issue took place simultaneously with the process of restoring the structures of the state. Thus, it deserves appreciation that the legislator, being aware of the need to develop legal acts necessary for the functioning of administration, did not lose sight of the issue of developing the text of the Constitution. Although the Legislative Sejm’s ordinance of 20 February 1919 entrusting Józef Piłsudski with the further execution of the office of Chief of State,¹ also called the Small Constitution, was the first act of constitutional nature adopted in the period of the Second Polish Republic, it was temporary, focused on organisational issues and ignored the matters concerning human rights. Due to that, its content is not the subject matter of further discussion. However, the Act of 17 March 1921: the Constitution

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¹ Journal of Laws of the Polish State [Dz.Pr.P.P.] of 1919, No. 19, item 226.

of the Republic of Poland² contained regulations determining the scope of human rights and obligations. These types of provisions were also included in the bills preceding its adoption.

2. SCOPE OF THE RIGHT TO PRIVACY

Further discussion requires that “privacy” and “the right to privacy” should be defined. Omission of this process would result in depriving the reasoning of whatever limits and thus, would have no scientific value. Thus, it must be pointed out that defining “privacy”, the interwar doctrine postulated that it was the rights “constituting a tiltyard for the state authorities; by formulating them an individual is given a sphere of existence and acting that is free from the state interference. They determine the scope of a citizen’s liberty, i.e. those factors of interests that are recognised as those belonging to the sphere of autonomous individual acting, i.e. left to an individual’s free determination, excluding any coercion by the state authorities as well as private one originating from other entities”.³ “Privacy” is at present explained in a similar way. For example, K. Motyka understands “privacy” as the right to be left in peace, the right to control information about oneself, to control access to a person and as an individual’s autonomy.⁴ On the other hand, J. Braciak highlights that everything that is found in the sphere commonly defined as private is totally subjective, depending on the particular person’s psyche.⁵ In literature, it is unquestionably indicated that while it is not possible to formulate a uniform definition of “privacy”, it is purposeful to refer to the spheres creating it.⁶ In this context, in the justification for its judgement of 24 June 1997 concerning the case K 21/96, the Constitutional Tribunal stated that privacy is composed of the principles and rules concerning various spheres of an individual’s life and their common feature consists in granting an individual the right “to live his own life organised following his own will and with whatever external interference limited to absolutely necessary minimum”.⁷ The similarity of the opinions presented in the period of the Second Polish Republic and at present undoubtedly results from the fact that the comprehension of the scope of “privacy” is universal and timeless in nature. From this perspective, “privacy” does not transform. Thus, potential changes may concern, e.g. not whether the secrecy of correspondence is within the scope of “privacy” but in what type of situations it can be limited. As a result, it should be assumed that the evolution of “privacy”, inter alia dictated by the specificity of

² Journal of Laws [Dz.U.] of 1921, No. 44, item 267; hereinafter: the March Constitution.

³ W. Komarnicki, *Polskie prawo polityczne (geneza i system)*, reprint of 1922 edition, Wydawnictwo Sejmowe, Warsaw 2008, p. 561.

⁴ M. Jagielski quotes K. Motyka’s opinions. See, M. Jagielski, *Konstytucjonalizacja ochrony prywatności*, [in:] R. Małajny (ed.), *Konstytucjonalizm a doktryny polityczno-prawne. Najnowsze kierunki badań*, Katowice 2008, p. 265.

⁵ J. Braciak, *Prawo do prywatności*, Warsaw 2004, p. 22.

⁶ J. Sieńczyło-Chlabicz, *Naruszenie prywatności osób publicznych przez prasę*, Warsaw 2006, p. 75.

⁷ The Constitutional Tribunal judgement of 24 June 1997, K 21/96, Legalis No. 10365.

the period and the level of development, does not concern its grounds but only its limits. Approving of the above-presented stands, I would like to supply my own analysis. Thus, I would like to point out that I perceive privacy as such forming of legal norms that ensure an individual's functioning based on internal and external stimuli that make it possible to shape one's own personality and opinions without the state apparatus' control, provided that the personality shaped this way does not infringe the rights protected by law, as well as in the way free from third parties' interference; moreover, with a possibility of building a personality based on non-material values and material objects. Thus, privacy covers possessing one's own secrets, beliefs and opinions (internal stimuli), a possibility of expressing them in public or only to particular addressees (external stimuli, e.g. the secrecy of correspondence), as well as identifying with a particular worldview and developing one's own personality in conformity with this opinion (non-material values) and the sense of ownership of specified material objects. I believe it is obvious that the wealth collected, understood as every individual's property, creates a component of his privacy limits. Even understood intuitively, the privacy of a person living an affluent life is different from the privacy of a person struggling with financial problems. Disregarding the above, I would also like to indicate that the concept of "privacy" is not the same as the concept of "the right to privacy". The latter means an individual's right to make use of "privacy", on the one hand, and providing an individual with the means of legal protection, which he/she may use in a situation when his/her privacy is or has been infringed, on the other hand. The analysis of the position of "privacy" in basic law bills as well as the text of the March Constitution is carried out based on the opinion expressed above.

3. RIGHT TO PRIVACY IN THE CONSTITUTIONAL BUREAU'S BILLS AND THE PROJECT OF THE QUESTIONNAIRE

The Cabinet of Prime Minister Jędrzej Moraczewski started a discussion about the shape of the political system of the restored Polish State on 29 November 1918, when the Minister of Internal Affairs, Stanisław Thugutt, presented a programme of work on the text of a constitution and proposed establishing a section or department for constitutional bills.⁸ The conditions of the political scene of the time excluded the possibility of working on the basic law in the form proposed by Minister Thugutt. Thus, instead of the proposed "section" or "department", the Constitutional Bureau affiliated to Prime Minister was founded in January 1919 and in its two months' activity, it developed two and published three constitutional bills.⁹

The first bill was entitled "Constitution of the Republic of Poland Bill developed by Józef Buzek, PhD" and was commonly called the "American bill" by Józef

⁸ S. Krukowski, *Geneza konstytucji z 17 marca 1921 r.*, Warsaw 1977, p. 13.

⁹ The "American" bill was published by the Constitutional Bureau, however, the bill was developed already before the Bureau was established. Compare, J. Buzek, *Projekt Konstytucji Rzeczypospolitej Polskiej oraz uzasadnienie i porównanie tego projektu z konstytucją szwajcarską, amerykańską i francuską*, Warsaw 1919, p. 2.

Buzek. The author referred to the text of the American Constitution. The next bill was developed by Mieczysław Niedziałkowski and was formally proposed as "Constitution of the Polish People's Republic Bill". It was called "people's bill" because of the author's political party membership and an assumption in the text that "the Polish State shall be free and independent People's Republic". The third bill, presented under the title "Constitution of the Republic of Poland Bill" referred to the content of the French basic law and, thus, it was called the "French bill". The authorship of this bill raises doubts.¹⁰

The American bill,¹¹ stipulated the right to free choice of the place of residence called "the right of free movement and abode" and the right to property (Article 7). Moreover, it ensured personal liberty (Article 10) referring to the Polish legislature of 1430. It also guaranteed home inviolability (Article 11) and the secrecy of correspondence (Article 12). The above-mentioned regulations were contained in Chapter I entitled "Nation and lands". The people's bill shaped the scope of citizens' rights in Chapter II entitled "Citizens' rights". The bill guaranteed the freedom of speech and conscience (Article 13), a ban on a body search (Article 14), the freedom to select the place of residence and to transfer property (Article 17). Moreover, it confirmed the right to home inviolability (Article 19) and the secrecy of correspondence (Article 20). Passing to the French bill, it is necessary to notice that it regulated the issues connected with the status of a citizen in Chapter V, while the American and the people's bills did it straight at the beginning. The French bill ensured personal liberty (Article 72), guaranteed private property inviolability (Article 74) and home inviolability (Article 75). Moreover, it guaranteed freedom to select the place of residence and to transfer property (Article 76), the freedom to express thoughts (Article 79), the secrecy of correspondence (Article 80) and the freedom of religion (Article 83).

The comparison of the bills shows that the matter of privacy was regulated in the broadest manner, at the level of basic law, by the French bill. It should be highlighted, however, that none of the presented bills obtained the official government support and the approaching session of the Legislative Sejm required the government's decision on that issue. The solution to the problem became the task for the next government led by Prime Minister Ignacy Paderewski, who on 25 January 1919 appointed a team composed of "men of science and persons taking prominent part in public life in order to assess the bills prepared for the Sejm from scientific and political point of view".¹² The team working from 19 February 1919 till 12 March 1919 was called "Questionnaire concerning the Constitution of the Republic of Poland Bill" and Michał Bobrzyński, a law historian, was appointed its chairman. The Questionnaire continued the work on and reviewed the bills

¹⁰ S. Krukowski argues that Władysław Wróblewski was the author of the "French" bill. Compare, S. Krukowski, *Geneza...*, pp. 16–17.

¹¹ The complete texts of the American, French and people's bills can be found in: M. Jabłonowski, W. Jakubowski, K. Jajecznik, *Ku Rzeczypospolitej demokratycznej. Polska debata ustrojowa 1917–1921*, series: *O niepodległą i granice*, Vol. 8, Pułtusk–Warsaw 2014, pp. 327–348 and pp. 360–378.

¹² W. Komarnicki, *Polskie prawo...*, p. 149.

of the Constitutional Bureau, which initially were a starting point for the work of the Questionnaire. However, during the second session of the Questionnaire, a unanimous decision was taken that further work would be based on the French bill.¹³ The final result of the team's work was a constitutional bill submitted to the government in March 1919. It was entitled "Constitution of the Republic of Poland Bill developed by Professors Michał Bobrzyński, Stanisław Bukowiecki, Zygmunt Chrzanowski, Zygmunt Cybichowski, Stanisław Horwatt, Bolesław Koskowski, Władysław Maliniak, Konrad Niedziałkowski, Feliks Ochimowski, Michał Rostworowski, Stanisław Starzyński, Aleksander Świętochowski, Józef Świeżyński and Stanisław Wrólewski".¹⁴ The Questionnaire's bill devoted the whole Chapter V entitled "Citizens' rights and duties" to issues connected with human rights. The bill guaranteed personal liberty (Article 85), property inviolability (Article 87), home inviolability (Article 88), the right to express thoughts (Article 92), the secrecy of correspondence (Article 93) and the freedom of religion (Article 97) with an indication that the complete freedom concerns only those religions that are legally recognised (Article 108 *a contrario*). The authors of the bill envisaged a possibility of temporary suspension of the above-mentioned rights, with the exception of the freedom of religion, for the time of war as well as in the face of a threat of war, possibly in case of internal disturbances and, in addition, in case of conduct that bears the character of high treason, when the constitution of the state is threatened, and finally, when personal security of citizens is at risk (Article 113).

4. RIGHT TO PRIVACY IN GOVERNMENTAL BILLS

When the Questionnaire presented its bill, the Legislative Sejm had already started work and appointed the Constitutional Commission. On 12 March 1919, the Commission requested that the government transfer the Legislative Bureau to the Commission and present the governmental constitutional bill.¹⁵ The Cabinet did not decide to support the Questionnaire's bill and on 29 March 1919 resolved that the basic law bill would not be submitted to the Legislative Sejm as a governmental bill but as a result of the Questionnaire's work.¹⁶ The decision had two effects. On the one hand, the Constitutional Commission decided it would not take into account the Questionnaire's bill because it did not gain the support of the Council of Ministers. On the other hand, the government represented by the Minister of Internal Affairs, Stanisław Wojciechowski, started working on the next basic law bill. Its author was Włodzimierz Wakar. He adopted a systematic method based not on chapters but on titles and included guarantees concerning personal inviolability, the inviolability of the hearth and home, and family relationships, the protection of religion and the secrecy of correspondence in Title II: "Citizens' relations". The bill entitled "Basis of the Order of the Republic of Poland" did not win Minister Wojciechowski's

¹³ S. Krukowski, *Geneza...*, p. 29.

¹⁴ Legislative Sejm of the Republic of Poland, paper no. 443B.

¹⁵ S. Krukowski, *Geneza...*, p. 70.

¹⁶ *Ibid.*, pp. 58–59.

approval. However, it served him as a basis for developing a governmental bill called “Constitutional Declaration Bill” adopted by the Council of Ministers on 3 May 1919 and submitted to the Legislative Sejm on 6 May 1919.¹⁷ The Declaration was composed of 12 parts and the second one was entitled “Citizens’ rights and duties”, and included the following guarantees: inviolability of a person, the hearth and home, and family relationships, the protection of religion and the secrecy of correspondence. Thus, this part of the bill is the same as Włodzimierz Wakar’s one. However, the Declaration also guaranteed the freedom of speech, press and image creation, and the freedom to acquire and sell property. This way, the author expressed the necessity of protecting the area that unavoidably shapes privacy in man’s life.

There was also another governmental bill entitled “Constitution of the Republic of Poland Bill” adopted by the Council of Ministers in the form of a resolution on 1 November 1919 and submitted to the Sejm two days later.¹⁸ This time, the bill acquired the form of a constitutional act, not a declaration. The matter of citizens’ rights and duties was incorporated in Chapter V. The author guaranteed personal liberty (Article 75), property inviolability (Article 77), home inviolability (Article 78), the freedom to select the place of residence and stay on the territory of the state (Article 79), the freedom to express ideas in speech, press and image (Article 80), the secrecy of correspondence (Article 81) and the freedom of religion (Article 85). The rights were of course subject to limitation resulting from their purpose and the content of statutes based on which they were developed. Moreover, the author of the bill admitted a possibility of temporary suspension of the rights, with the exception of property inviolability, in accordance with the decree of Chief of State issued on the Council of Ministers’ motion, provided the suspension of the rights should be necessary for the maintenance of public security. The bill also determined that the suspension could take place only during a war or when an outbreak of a war threatens as well as in case of internal disturbances or widespread conspiracies that threaten the state (Article 96).

5. RIGHT TO PRIVACY IN PARLIAMENTARY BILLS

At the same time as the governmental Constitutional Declaration was proposed, MPs’ bills started to be submitted to the Legislative Sejm, too. It should be pointed out that on 6 May 1919, the bill of the “Wyzwolenie” Polish People’s Party was submitted to the Sejm.¹⁹ Next, on 27 May 1919, the Parliamentary Union of Polish Socialists²⁰ submitted their bill. On 30 May 1919, Stanisław Głabiński, MP, and other MPs of the Popular National Union filed “an urgent motion to enact Constitution of the Republic of Poland Bill”.²¹ The next bill was one by Józef Buzek “concerning

¹⁷ Legislative Sejm of the Republic of Poland, paper no. 443A.

¹⁸ Legislative Sejm of the Republic of Poland, paper no. 443F.

¹⁹ Legislative Sejm of the Republic of Poland, paper no. 443.

²⁰ Legislative Sejm of the Republic of Poland, paper no. 443C.

²¹ Legislative Sejm of the Republic of Poland, paper no. 443D.

the Constitution of the Republic of Poland".²² The bill, like the one of the Popular National Union, was submitted on 30 May 1919.

The analysis of the content of the above-mentioned bills should be started with the bill of the "Wyzwolenie" Polish People's Party. In Title II: "Citizens' union", it was, *inter alia*, laid down that the nation by means of law ensures inviolability of a person, family relationships and the hearth, the protection of religion and the secrecy of letters. The interpretation of the language and the purpose makes us assume that the authors, emphasising the importance of personal inviolability, the protection of family life, religion and secrecy of correspondence, outlined the constitutional comprehension of privacy with respect to the specificity of the time. Thus, privacy covered the internal sphere (family relations, religion and its protection) as well as the external one (body inviolability, secrecy of correspondence). It is indicated in literature that Włodzimierz Wakar was the author of the bill.²³

The bill of the Parliamentary Union of Polish Socialists was similar to the people's one. The similarity consists in the fact that Mieczysław Niedziałkowski was its author. In Chapter II: "Citizens' rights", he guaranteed the freedom of conscience, speech and press (Article 12), personal inviolability (Article 13), the freedom to change the place of residence and stay (Article 14), home inviolability (Article 16), and the secrecy of correspondence (Article 17).

On the other hand, the bill by Stanisław Głabiński, and other MPs of the Popular National Union contained the citizens' rights and duties in Chapter I of the basic law, which shows how important the issues concerning an individual's rights were for the authors. As far as this bill is concerned, it is also necessary to assume that, although the title of the Chapter is "Citizens' rights and duties", it essentially concerns the issue of human rights. The bill guaranteed private property inviolability (Article 6), home inviolability (Article 7), the freedom to select the place of residence (Article 8), the secrecy of correspondence (Article 11), and the freedom of religion (Articles 15 and 16). It should be pointed out, however, that the author admitted the possibility of a temporary suspension of the right to home inviolability and the secrecy of correspondence due to public security (Article 28).

Józef Buzek's bill does not have a chapter dealing only with the rights and duties and the legal norms of that nature are gathered in Chapter I entitled "Nation and lands". Like other above-presented bills, this one also guaranteed, as a rule, home inviolability and the secrecy of correspondence (Articles 11 and 12, respectively) as well as the freedom of religion and conscience inviolability (Article 29). What deserves attention is the circumstance that this time the author did not decide to construct a norm entitling *expressis verbis* to temporary suspension of all or some of the rights in strictly determined situations. The above-mentioned bills, i.e. the Questionnaire's one, the governmental Constitutional Declaration Bill and MPs' bills were submitted to the Constitutional Commission of the Legislative Sejm. The first reading of the Constitutional Declaration Bill strengthened the Commission's conviction that it should undertake the task of developing a constitutional act, not

²² Legislative Sejm of the Republic of Poland, paper no. 443E.

²³ S. Krukowski, *Geneza...*, p. 83.

a declaration. However, the Commission did not manage to work out an internal consensus about the choice of a particular bill and its adoption as a basis for their work. As a result, the Commission started working on their own bill. In the meantime, another governmental bill, already mentioned above, was submitted on 1 November 1919.

6. RIGHT TO PRIVACY IN THE MARCH CONSTITUTION

The work of the constitutional commission finished in June 1920. On 12 June, the Commission submitted the basic law bill it developed to the Legislative Sejm. The bill was composed of six chapters, among which Chapter V concerned "Citizens' rights and citizens' duties". This part of the basic law bill contained guarantees concerning full protection of life and liberties to all citizens (Article 99), personal liberty (Article 100), the right of ownership (Article 102), home inviolability (Article 104), the freedom to select the place of residence and stay in the territory of the state (Article 105), the freedom to express ideas and beliefs (Article 107), the secrecy of correspondence (Article 109) and the freedom of conscience and religion (Article 114). The authors admitted a possibility of temporary suspension of some rights, i.e. personal liberty, home inviolability and the secrecy of correspondence for the reason of public security. The suspension could be implemented on a local and national scale (Article 130). Finally, the Legislative Sejm adopted the text of the first basic law after Poland regained independence on 17 March 1921. The Constitution, called the March Constitution because of the month of its adoption, regulated the matter of privacy, following the Constitutional Commission's bill, in Chapter V. However, it was entitled "General duties and rights of citizens". The legislator shaped the sphere of an individual's autonomous activities by covering with the constitutional guarantees the protection of liberty and property (Article 95). It guaranteed personal liberty admitting its limitation, especially in the form of search of a person and arrest, only in cases prescribed by law (Article 97), ensured the inviolability of home and hearth (Article 100) and the liberty of selecting his/her place of residence on the territory of the state (Article 101). Moreover, the Constitution guaranteed the right to express freely one's ideas and convictions in so far as a citizen does not thereby violate legal provisions (Article 104), the secrecy of correspondence (Article 106) and the freedom of conscience and religion (Article 111). The Constitution admitted a possibility of temporary suspension of citizens' rights: of personal liberty, of inviolability of home and the secrecy of correspondence for the whole territory of the state or for localities in which it may prove necessary for the reason of public safety (Article 124). Based on the presented norms of the March Constitution, it should be assumed that the legislator noticed privacy in the matters connected with the internal sphere of an individual's existence (freedom of conscience, the right to express ideas and beliefs) as well as the external sphere (the right to property, the protection of this right, liberty of selecting the place of residence, the secrecy of correspondence and, finally, home inviolability). Thus, it is a catalogue of such rights that enable an individual to acquire his own identity

and, based on that identity, build his own social and financial position, and develop his own worldview. Moreover, the indicated rights and guarantees mutually supplement each other and result from each other. It is so because constitutional protection of liberty and property is connected with the inviolability of home, and this right corresponds to personal liberty, which in turn is connected with the right to express ideas and convictions, the secrecy of correspondence and the freedom of conscience and religion.

It is necessary to draw attention to the fact that the above-presented rights are not absolute in nature and as such they are subject to limitations applied by the legislator in various forms. As far as this aspect is concerned, there are three methodologies used in the March Constitution: a limitation that is strictly constitutional in nature, a limitation by reference to general legislation and a mixed limitation precisely laid down in the Constitution with additional reference to general legislation. Article 95 may be an example of a strictly constitutional limitation as it *in principio* stipulated: "The Republic of Poland guarantees on its territory, to all, without distinction of extraction, nationality, language, race or religion, full protection of life, liberty and property". Although there is a reference to statutes in the further fragment of the norm, it is made in the scope concerning the protection enjoyed by foreigners. As far as the second method is concerned, it is necessary to point out Article 106, i.e. the secrecy of correspondence. The provision stipulated that "the secrecy of letters and other correspondence may be infringed upon only in cases provided by law". Thus, the legislator left every single regulation of the situation to general legislation in a situation when the infringement of constitutional guarantees of the secrecy of correspondence is not sanctioned. On the other hand, the guarantee placed in Article 97 is an example of the mixed limitation. On the one hand, the norm constitutes the right of "personal liberty" and, on the other hand, indicates an exemplary catalogue of admissible ways of violating it with the use of the phrase concerning admissibility of "search of a person and arrest" and, at the same time, determination that limitation of personal liberty is admissible "only in cases prescribed by law, and in the manner defined by statutes, by virtue of an order from judicial authorities". However, the legislator was not satisfied with such determination of the right to personal liberty and decided that it was purposeful to specify that in a situation when "a judicial order cannot be issued immediately, it should be served, at the latest, within forty-eight hours with a written statement of the cause of search or arrest. Arrested persons who have not been served within forty-eight hours with a written statement of the cause of arrest regain their freedom immediately". Finally, the legislator once again referred to general legislation and indicated that "The means of compulsory service by which the administrative authorities may enforce their orders are determined in statutes". The presented catalogue of the methods used to build the norms shaping the right to privacy indicates difficulties connected with the discussed matter as well as the legislator's will to determine those rights in the way meeting the expectations of the sovereign.

7. CONCLUSIONS

Summing up this discussion, it is necessary to emphasise the similarity of the passed basic law to its bills with regard to the way in which the legislator and the authors of the bills shaped the scope of an individual's rights that can be described as privacy and the right to it. Every text of the bills regulated the issues connected with the right to property, body inviolability, inviolability of the home, the freedom of conscience and the secrecy of correspondence. The doctrine of the times noticed the value and importance of the above-listed rights and called them "basic constitutional rights".²⁴ Thus, the above-presented bills tried to materialise the constitutional protection of the right to privacy, although they did not do it *expressis verbis*.

It should also be indicated that it was decided to describe the part concerning "the rights", thus also "privacy" and "the right to privacy", with the use of the word "citizen" in the title of the respective chapter of both the basic law and the bills. However, it should be highlighted that the nature of the legal regulations in them referring to "privacy" suggests that, in fact, they concern "human" rights and not only "citizens'" ones. Not only systemic interpretation but also the provisions in the bills and the text of the March Constitution confirm this. For example, Article 99 of the Constitutional Commission's bill laid down that "Foreigners exercise the rights laid down in statutes and international agreements", and Article 22 of the bill of the Parliamentary Union of Polish Socialists provided that "A foreigner staying within the territory of the Republic of Poland is subject to the statute and shall exercise all personal rights which it guarantees to the state's citizens". The March Constitution stipulated that "Foreigners enjoy, on condition of reciprocity, rights equal to those of citizens of the Polish State, and have duties equal to those of such citizens, unless statutes expressly require Polish citizenship" (Article 95 *in fine* March Constitution). The above unanimously indicates that the legislator made the possibility of exercising some rights dependent on the Polish citizenship. However, in case of "the right to privacy", it was not necessary. That is why, those rights should be classified as human rights and not citizens' rights.²⁵

To conclude, it should be pointed out that the above-presented regulations make it possible to state that the right to privacy was defined in a constitutional and not colloquial form already at the stage of work on the basic law, which was later called the March Constitution, as well as in the text of its final version. The fact that it was not done *expressis verbis* results from the legislator's conviction that such a solution was not necessary for ensuring appropriate constitutional guarantees. In accordance with the March Constitution, the right to privacy was not absolute in nature and was addressed to every individual who was within the territory of the Polish state.

²⁴ Thus, W. Komarnicki, *Polskie prawo...*, p. 561.

²⁵ Similarly, based on the March Constitution, the scope of regulations shaping the "rights to privacy" are classified as human rights, inter alia, by A. Młynarska-Sobaczewska, J. Hołda and Z. Hołda. See, A. Młynarska-Sobaczewska, *Wolności i prawa człowieka i obywatela*, [in:] D. Górecki (ed.), *Polskie prawo konstytucyjne*, Warsaw 2012, pp. 82–83; J. Hołda, Z. Hołda, *Prawa człowieka w wewnętrznym porządku prawnym*, [in:] J. Hołda, Z. Hołda, D. Ostrowska (ed.), J.A. Rybczyńska, *Prawa człowieka. Zarys wykładu*, Warsaw 2014, pp. 29–30.

The scope of the regulation undoubtedly met social expectations in the restored state. Moreover, this scope was encouragement to develop other regulations and norms concerning an individual's right to enjoy the sphere free from interference and activities of the state apparatus and third parties.

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Basic law

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- Constitution of the Republic of Poland Bill of March 2019 developed by Professors Michał Bobrzyński, Stanisław Bukowiecki, Zygmunt Chrzanowski, Zygmunt Cybichowski, Stanisław Horwatt, Bolesław Koskowski, Władysław Maliniak, Konrad Niedziałkowski, Feliks Ochimowski, Michał Rostworowski, Stanisław Starzyński, Aleksander Świętochowski, Józef Świeżyński and Stanisław Wrólewski, Legislative Sejm of the Republic of Poland, paper no. 443B.
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RIGHT TO PRIVACY IN THE MARCH CONSTITUTION OF POLAND
OF 1921 AND ITS BILLS

Summary

At present, the right to privacy is one of fundamental human rights. In the Polish legal system, its value is emphasised by the circumstance that it was laid down *expressis verbis* in the Constitution that is currently in force. This situation is a unique novelty since the right to privacy was not directly expressed in the previous Polish basic laws. However, this does not mean that the legislator did not envisage any regulations related to the matter of privacy. Indeed, this norm can be derived from the guarantees indicated in the content of the March Constitution. The article presents the development of the right to privacy in the March Constitution and its bills.

Keywords: right to privacy, civil law, March Constitution, personality rights, human rights

PRAWO DO PRYWATNOŚCI W KONSTYTUCJI MARCOWEJ I JEJ PROJEKTACH

Streszczenie

Współcześnie prawo do prywatności jest jednym z podstawowych praw człowieka. W systemie prawa polskiego jego znaczenie podkreśla okoliczność, iż zostało wyrażone *expressis verbis* w obowiązującej Konstytucji. Sytuacja ta stanowi swoiste *novum*, gdyż w poprzednio obowiązujących w Polsce ustawach zasadniczych prawo do prywatności nie było wyrażane w sposób bezpośredni. Nie oznacza to jednak, iż ustrojodawca nie przewidywał regulacji odnoszących się do materii prywatności. Przedmiotową normę można bowiem wywodzić już z gwarancji wskazanych w treści Konstytucji marcowej. Niniejszy artykuł prezentuje ukształtowanie prawa do prywatności w Konstytucji marcowej i jej projektach.

Słowa kluczowe: prawo do prywatności, prawo cywilne, Konstytucja marcowa, dobra osobiste, prawa człowieka

Cytuj jako:

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