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CONTEMPORARY UNDERSTANDING OF THE RELATIONSHIP BETWEEN PUBLIC SECURITY AND PUBLIC ORDER

Abstract

The modern world and consequently the security environment in which human beings live are multidimensional and multifaceted. Thus, security can be viewed through the prism of many criteria. One of its types is public security, which – in the almost unanimous opinion of security studies researchers – is the responsibility of a number of institutions. Inseparable with it is the concept of public order. Both concepts are intensively researched on the grounds of legal and security sciences. The research assisting the development of this article has made use of theoretical research methods. Their choice has been based on such criteria as: the object and purpose of cognition and the time allocated for the research. The conducted research indicates that public security and public order is a subset included in the set of state security, however, it plays an extremely important role in the process of social development. Maintained at the right level, public security and order optimise the development of individuals and entire communities not only locally but also internationally. Nevertheless, one of the basic prerequisites to guarantee high security standards is the skilful recognition of threats and the creation of a system of legal and institutional protection of values to be watched over. Undoubtedly, the most important of these are life, health, property, and the environment.

Keywords

public security, public safety, public order, threat, law

Introduction

Security has always been and will continue to be one of the most basic and important human needs regardless of time, place, and situation.¹

In view of the above features, security is classified² using a variety of criteria in order to identify rational ways of addressing its individual elements. Many of the criteria used make it possible to distinguish public security, which is characterised by a high level of complexity.

The growing importance of public security³ and the impact which university activities may have on it require more and more precise identification of mechanisms that affect it and possibilities for improvement. The above can be done through scientific research dedicated to the development of rational concepts with a view to enhancing the level of safety.⁴ This research should provide knowledge that meets the following cognitive qualities: generality, accuracy, precision, information content, logical simplicity, and epistemological certainty.⁵

Research assumptions

The research supporting the development of this article was carried out in three consecutive stages, *i.e.*: conceptu-

alisation of the research, its implementation and finalisation.⁶

In the course of the research process, the scientific method applied was understood as “the very process of activities for posing questions, finding solutions and justifying and systematising answers, or as a set of assumptions adopted as a framework or guidelines for the research (...), or, finally, as the totality of activities and measures used to achieve the research results in an efficient way”.⁷

Given the above, the following theoretical research methods were applied during the research process:

- analysis, which made it possible to identify the scope and subject-matter of public security and public order;
- comparison, which was used to identify similarities and differences between public security and public order;
- generalisation, which enabled to identify recurring characteristics and phenomena in the studied area;
- abstracting, used to distinguish salient features and separate them from unimportant ones.

Public security

“Public security” is a commonly used concept, which has multiple meanings. Typically, it refers to institutions that

¹ See: *Współczesne postrzeganie bezpieczeństwa*, Jałoszyński K, Wiśniewski B, Wojtuszek T (ed.), BielskoBiała 2007.

² See: P. Lubiewski, *Bezpieczeństwo państwa w ujęciu systemowym*, „Zeszyty Naukowe SGSP” 2020, No. 3, pp. 113–126.

³ A. Babiński, *W poszukiwaniu definicji bezpieczeństwa publicznego*, „Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona” 2020, Vol. 35, Iss. 2, p. 105.

⁴ A. Czupryński, *Właściwości badań naukowych bezpieczeństwa*, [in:] B. Wiśniewski (ed.), *Bezpieczeństwo w teorii i badaniach naukowych*, Szczytno, 2011, p. 117; B. Wiśniewski, *Praktycznie aspekty badań bezpieczeństwa*, Warszawa 2020, p. 8.

⁵ See: J. Such, *Problemy weryfikacji wiedzy*, Warszawa, 1975; *Bezpieczeństwo w teorii i badaniach naukowych: Wydanie III uzupełnione i poszerzone*, B. Wiśniewski (ed.), Szczytno 2021.

⁶ Cf.: M. Cieślarczyk, *Metody, techniki i narzędzia badawcze oraz elementy statystyki stosowane w pracach magisterskich i doktorskich*, Warszawa 2003, pp. 22–23.

⁷ S. Kamiński, *Nauka i metoda. Pojęcie nauki i klasyfikacja nauk*, Lublin 1992, p. 202.

protect life and property, the assets of the state, its system, and sovereignty⁸ against any type of threats⁹.

Numerous interpretations of this concept are presented in the relevant literature. According to Władysław Kawka, “public security is a state in which the general public and their interests, as well as the state and its objectives, are guaranteed protection against damage that may come from any source. Protection of public security is therefore a responsibility of the state, which by means of legal norms determines what is consistent with security, what threatens it, and what measures should be taken with a view to its protection.”¹⁰

Stanisław Pikulski, among others, draws attention to the essence of public security. He understands it as the highest social value, which determines the safety of life, health of citizens and their closest relatives, as well as guaranteeing inviolability of their property. He defines the concept of public security as a certain desired state of affairs, warranting undisturbed functioning of public facilities and security of life, health and property of citizens¹¹. At the same time, S. Pikulski points out that it is the threatened entity, and not the source of the threat, which determines whether it falls into this

category. Thus, public security may be disturbed by man intentionally or unintentionally, and human behaviour can take the form of a crime or a minor offence. The security can also be disturbed independently of human will, *i.e.*, by forces of nature, such as floods or fires.¹²

The analysis of many studies indicates that “public security” refers primarily to the safety of citizens. There are no clear, universally accepted statements in the relevant literature on the boundaries between the concepts of internal and public security and whether the latter is a broader or narrower concept than the former one.¹³ At the same time, it should be emphasised that “public security” is a state in which all citizens, individually and indiscriminately, living in the State and in society are not threatened by any danger, regardless of what its source might be.¹⁴ By an overwhelming majority, “public security” is also a factual situation within the State that enables, without being subjected to harm from any source, the normal functioning of the State and realisation of its interests, the preservation of lives, health and property of individuals and the enjoyment by those individuals of the rights and freedoms guaranteed by the Constitution and other laws.¹⁵

⁸ See: R. Ratushnyi, B. Wiśniewski, G.G. Sander, P. Pantya, *Introduction to Deliberations on State Security Strategy, “Internal Security”* 2021, Vol 13, No. 1, pp. 7–18.

⁹ See: B. Wiśniewski, *Challenges and Hazards of the Third Decade of the 21st Century, “Security Dimensions”* 2021, No. 35, pp. 179–191; B. Wiśniewski, *Przygotowania obronne resortu spraw wewnętrznych, Szczytno* 2014, p. 31.

¹⁰ W. Kawka, *Policja w ujęciu historycznym i współczesnym*, Wilno 1939, pp. 3–5.

¹¹ S. Pikulski, *Podstawowe zagadnienia bezpieczeństwa publicznego*, [in:] W. Bednarek, S. Pikulski (ed.), *Prawne i administracyjne zagadnienia bezpieczeństwa osób i porządku publicznego w okresie transformacji ustrojowo-gospodarczej*, Olsztyn 2000, p. 101.

¹² *Ibidem*.

¹³ M. Lisiecki, *Jakość w zarządzaniu bezpieczeństwem obywateli*, Lublin 2009, p. 81.

¹⁴ M. Małecka-Lyszczek, *Wybrane aspekty prawa jednostki do bezpieczeństwa na szczeblu samorządu lokalnego*, [in:] E. Ura (ed.), *Bezpieczeństwo wewnętrzne we współczesnym państwie (a collective work)*, Rzeszów 2008, p. 10.

¹⁵ Cf.: J. Zaborowski, *Prawne środki zapewnienia bezpieczeństwa i porządku publicznego*, Warszawa 1977, p. 11.

According to many specialists, “public security” means maintaining the inviolability of life, health, dignity, freedom, property and legal order and the basic facilities of the state.¹⁶

The concept of “public security” appears in normative acts of both statutory rank and in legal acts of lower rank. The scope of its application by the legislator in legal regulations of a different rank is constantly increasing due to the increasing legal, as well as social and political role of public security in the world. Public security¹⁷ is not an abstract concept of administrative law, which defines and interprets it, since the law defines certain designata of that concept.¹⁸ Public security is first and foremost a public function of administrative bodies, but it can also be a legal criterion for action, a competence of the state administration or of the self-government. Public security is first of all a constitutional value, for whose protection it may be possible to restrict the exercise by citizens of their constitutional freedoms and rights.¹⁹ Therefore, interference by the state in the sphere of human freedoms and rights may only take place with a view to pursuing the values protected by the Constitution.

The Constitution of the Republic of Poland in Article 5 mentions, among

the responsibilities of the state, the assurance of citizens’ safety. However, this term is also used in other constitutional provisions:

- Article 5 – The Republic of Poland shall (...) ensure the freedoms and rights of persons and citizens, as well as the security of the citizens (...);
- Article 31(3) – Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, 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 (...);
- Article 45(2) – Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order (...);
- Article 53(5) – The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others;
- Article 61(3) – Limitations upon the rights (to obtain information on the activities of organs of public authority) may be imposed solely to protect (...) public order, security, or important economic interests of the State;

¹⁶ E. Ochendowski, *Prawo administracyjne, część ogólna*, Toruń 2006, p. 131; *Współczesny wymiar funkcjonowania Policji*, B. Wiśniewski, Z. Piątek (eds.), Warszawa 2009, p. 28.

¹⁷ See: P. Lubiewski, *Systemowe ujęcie współdziałania w sferze bezpieczeństwa publicznego – szkic problemu*, „Zeszyty Naukowe SGSP” 2020, Vol. 75, No. 3, pp. 51–65; Wiśniewski B., Zwęgliński T., Socha R., *Public Administration, Public Tasks – Mutual Relations in The Context of The Polish Experiences the Field of Safety and Security Management*, “Facta Universitatis, Series: Working and Living Environmental Protection” 2017, No 2017/2/9.

¹⁸ See: B. Sprengel, *Ustrój organów administracji bezpieczeństwa i porządku publicznego*, Włocławek 2004; S. Pieprzny, *System podmiotów właściwych w sprawach ochrony bezpieczeństwa i porządku publicznego (selected issues)*, [in:] J. Dobkowski (ed.), *Prawo. Administracja. Policja. Księga pamiątkowa Prof. Wincentego Bednarka*, Olsztyn 2006; M. Lisiecki, B. Kwiatkowska-Basałaj, *Pojęcie bezpieczeństwa oraz prognostyczny model jego zapewnienia*, [in:] P. Tyrała (ed.), *Zarządzanie bezpieczeństwem*, Kraków 2000.

¹⁹ Article 31(3) of the Constitution of the Republic of Poland.

- Article 74(1) – Public authorities shall pursue policies ensuring the ecological security (...);
- Article 76 – Public authorities shall protect consumers (...) against activities threatening (...) privacy and safety;
- Article 126(2) – President of the Republic shall (...) safeguard the sovereignty and security of the State (...);
- Article 146(4) – the Council of Ministers, in particular, shall (...) ensure the external and internal security of the State;
- Article 229 – In the case of external threats to the State (...) the President of the Republic may, on request of the Council of Ministers, declare a state of martial law (...);
- Article 230(1) – In the case of threats to the constitutional order of the State, to security of the citizenry or public order, the President of the Republic may, on request of the Council of Ministers, introduce (...) a state of emergency (...).

Under the universally binding provisions of administrative law, the protection of public security is a part of the branch of government administration called *Internal affairs*, in accordance with Article 5(24) in conjunction with Article 29(1) of the Act of 4 September 1997 on the branches of government administration²⁰, which is headed by the Minister for Internal Affairs and Administration. Maintenance of public safety, in addition to protection of people's life and health and of property against lawless assaults, is one of the primary functions of the Police, according to Article 1(1) of the Police Act of 6 April 1990. On the other

hand, protection of public safety and order, in line with Article 1(2) of the Act, is a statutorily defined police task. It should be noted however that the issue of "public security" is also present in many other legal acts. One can point out here the following:

- Act of 21 June 2002 on the state of emergency, Dz.U. No. 113, item 985 as amended;
- Act of 18 April 2002 on the state of natural disasters, Dz.U. No. 62, item 558 as amended;
- The Act of 29 August 2002 on martial law and competences of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional bodies of the Republic of Poland, Dz.U. No. 156, item 1301 as amended;
- Act of 20 March 2009 on security of major events, Dz.U., 2009, No. 62, item 504 as amended;
- Act of 22 August 1997 on protection of persons and property, Dz.U., 2005, No. 145, item 1221 as amended;
- Act of 29 August 1997 on the protection of personal data, Dz.U., 2002, No. 101, item 926 as amended;
- Act of 21 May 1999 on arms and ammunition, Dz.U., 2004, No. 52, item 525 as amended;
- Act of 3 July 2002 – Aviation law, Dz.U., 2006, No. 100, item 696 as amended.

It should also be noted that as a result of the legislator indicating the designata of this concept, it appears in legal relations not as an abstract notion of administrative law, but as a constitutional value, the protection of which may require

²⁰ Consolidated text, Dz.U., 2007, No. 65, item 437 as amended.

restricting the exercise of citizens' rights and freedoms; as a task of supreme, central and local government administration bodies, as well as the responsibility of local government and specialised bodies. Additionally, the notion of public security appears as the task of private entities (personal and property protection companies, security guards providing security at major events), the task of social organisations and institutions and citizens themselves, as well as a premise justifying the withdrawal of certain rights.

Public order

Public order is the existing state of social relations and facilities which ensure safety, peace and order in places allocated for common use, as regulated by legal norms²¹ and rules of community life²². On a day-to-day basis, public order manifests itself in the observance of legal, moral, customary, and religious norms by natural persons and other entities, resulting in the harmonisation of individuals' lives and human communities.²³

W. Kawka analyses the notion of public order in legal and sociological terms and indicates its determinants.²⁴ The author defines public order as a set of

legal and extra-legal (e.g., moral, ethical, custom-based) norms, the observance of which conditions normal coexistence of individuals in a state organisation. He draws attention to the fact that the creation of public order norms is influenced by factors such as politics, religion, ethics, external morality, decency. These are, therefore, views that have grown up against the background of collective life, which differs depending on time, place, and the environment. In the author's opinion, the notion of public order has left its mark on the transformations that collective life has undergone.²⁵ According to Władysław Czapiński, "public order" is an external state which consists in people observing certain rules, norms and prohibition, the non-observance of which in conditions of collective human coexistence would expose people to dangers and inconveniences, despite the lack of malicious intent on the part of those who would not observe these rules, norms and prohibitions.²⁶ It should also be mentioned that Eugeniusz Ochendowski claimed that public order is a set of unwritten rules of citizens' behaviour in public places, the compliance with which is an indispensable element of an orderly life of an individual in the modern world, adding that these views

²¹ See: *Threats, Law and Organisation*, B. Wiśniewski, G.G Sander, P. Kobes (ed.), Hamburg 2019.

²² W. Kubala, *Przedmiot ochrony przepisów dotyczących przestępstw przeciwko porządkowi publicznemu*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1978, No. 2, p. 44; T. Zwęgliński, *Ocena wybranych elementów zdalnej metody nauczania na podstawie szkolenia specjalistów ochrony przeciwpożarowej*, „Zeszyty Naukowe Szkoły Głównej Służby Pożarniczej” 2020, No 75, Issue 1, pp. 281-310.

²³ W. Stach, *Bezpieczeństwo publiczne jako specjalność kształcenia*, „Przegląd Naukowo-Metodyczny. Edukacja dla Bezpieczeństwa” 2010, No. 2, pp. 124–131.

²⁴ S. Pieprzny, *Ochrona bezpieczeństwa...*, pp. 32–33.

²⁵ W. Kawka, *Policja w ujęciu historycznym...*, pp. 46, 67, 69, 73 and S. Pieprzny, *Administracja bezpieczeństwa i porządku publicznego*, Rzeszów 2008, p. 18.

²⁶ W. Czapiński, *Bezpieczeństwo, spokój, porządek publiczny*, „Gazeta Administracji i Policji Państwowej” 1929, No. 9, p. 317.

are subject to constant changes and are dependent on time or place.²⁷

It is important that as an object of legal protection, public order is also present in criminal law. The Penal Code contains a separate chapter entitled “Offences against Public Order”²⁸, which lists, among others, the following violations of law:

- taking or detaining a hostage (Article 252 of the Penal Code, hereinafter: kk),
- taking part in a riot (Article 254 kk),
- incitement to the commission of an offence, public display of content likely to facilitate the commission of a terrorist offence (Article 255 kk, Article 255a kk),
- publicly insulting or violationing personal inviolability because of national, ethical, race or religious affiliation (Article 257 kk),
- manufacture or possession of firearms without the required licence (Article 263 kk),
- crossing the border of the Republic of Poland in violation of the relevant regulations, using violence, threats, or deception (Article 264 kk).

There is a similar regulation to that of the Penal Code in the Code of Petty Offences²⁹, which contains Chapter VII entitled “Offences against public order and peace”. It defines, among others, the following offences:

- public disrespect for the Polish Nation, the Republic of Poland, and its constitutional authorities (Article 49 of the

Code of Petty Offences, hereinafter: kw),

- possession of offensive weapons in a public place with intent to use them in order to commit a criminal offence (Article 50a kw),
- disturbing the peace, public order, or quiet hours (Article 51 kw),
- conducting a public collection of offerings without the required authorisation (Articles 56, 57 kw),
- conducting economic activity without the required authorisation, concession, or entry in the register (Article 601 kw).

In consideration of the definition of the concept of public order one should agree with Stanisław Pieprzny, who defines public order as “a positive state created by legal and extra-legal norms (moral norms, principles of community life) acceptable and applied by the majority, ensuring proper co-existence and development of individuals and their communities with active participation of public entities responsible for the execution of tasks in this respect. The purpose of public order is to enable the normal development of social life and to ensure compliance with the rules of behaviour in public places [...] The entire domain of public order cannot be exhaustively presented. It should be noted that public order is not a permanent category. It is subject to change along with changes in social relations”.³⁰

²⁷ E. Ochendowski, *Prawo administracyjne*, Toruń 1996, p. 81.

²⁸ Act of 6 June 1997 – Penal Code (consolidated text, Dz.U., 2016, item 1137 as amended).

²⁹ Ustawa z dnia 20 maja 197 – *Kodeks wykroczeń* (consolidated text, Dz.U., 2015, item 1094 as amended).

³⁰ S. Pieprzny, *Ochrona bezpieczeństwa...*, p. 39.

Relations between public security and public order

The concepts of “public security” and “public order” are difficult to define in a general way, as they vary depending on the existing circumstances, and their semantic scope is influenced by, *inter alia*, legal regulations, changing living conditions, or norms of behaviour acceptable within a given social group. The relationship between public security and public order is considered together with the notion of security in general, and both are, in principle, jointly referred to in legal regulations. Given the fact that law has failed to positively define the notions of public order and security, the author proposes to abandon the attempt at formulating their definition. He refers to the centuries-old tradition, thanks to which the content of this function of the authorities has long been known, rooted in social consciousness and intuitively understandable, and focuses on the relations between community life and protective actions on the part of the state apparatus (central, local government). In such an approach, a special role is played by values covered by the concepts of public security and public order. The essence of activities aimed at guaranteeing the state defined as security has, therefore, a purposeful character. Because it is not possible to determine the precise scope of the concepts, which is obvious due to the variability of living conditions, views, *etc.*, all protective measures should be aimed at satisfying general needs, such as:

- protecting members of a community from external dangers, both natural (all kinds of elements and disasters) and those generated by other individuals and human communities;
- protecting members of a community from themselves, through the regulation of externalised emotional tensions within the community, effective control of social deviations, preventive and awareness-raising activities, *etc.*;
- protecting material and intellectual property, mainly by enforcing respect for ownership right, and such understanding of dangers of an economic nature which distinguishes between the theoretical and actual threat to welfare-creating impacts and to the quality of community life.³¹

The bilateral nature of public security and public order seems to be extremely important here. Both in the relevant literature and in the law, these concepts almost always appear together, and are used jointly to define the tasks of public administration. This does not mean, however, that they can be equated. There is certainly a level where these concepts overlap. Public order is, after all, a set of norms which, as stated in the definition, have a specific purpose the undisturbed and conflict-free functioning of individuals in society. In the literature on the subject, with regard to this relationship, a formulation is used that there is an intersection relationship between public order and public security.

In his deliberations on the above-mentioned relations, Jerzy Zaborowski expresses, *inter alia*, the view that there is

³¹ M. Mączyński, *Samorząd terytorialny a ochrona bezpieczeństwa i porządku publicznego na szczeblu lokalnym*, [in:] Dolata S (ed.), *Funkcjonowanie samorządu terytorialnego – doświadczenia i perspektywy*, Opole 1998, p. 186.

only a partial overlap between public security and public order and contends that the concept of public order also includes public peace, and that the concept of legal order only partially overlaps with the concepts of public security and public order. Accordingly, the author formulates several observations and conclusions, in which he points out that a number of concepts used in legal regulations in the field in question are not sufficiently defined, which is the reason why it is necessary to strive to reduce those as far as possible, and just keep only the two terms: “public security” and “public order” – as concepts with the most universal meaning. Since the boundary between them is blurred, legal provisions should use them together when entrusting state bodies with the authority to protect, secure, watch over them, etc.³²

Conclusions

Bearing in mind the primacy of science over law, it seems justified to quote the words of Antoni Osierda, who, on the grounds of law, observes that “the extensive and diverse, as far as the scope is concerned, subject of administrative-law norms covers almost all spheres of social life and activity of public administration, both from the systemic and functional point of view.”³³

The terms of public security and public order often appear in the legal system, but do not have a legal definition in the law that would give them a uniform content and semantic scope.”³⁴

As pointed out by Małgorzata Stahl, the word *public* is understood, in the simplest sense, as generally available, for general use, intended for public use.³⁵

Most often public security and public order are defined on the grounds of law, although in the security sciences this definition also occupies a significant place. However, the concept of public security, which indeed is the most important responsibility of the state and its most significant function, as embodied in the Constitution of the Republic of Poland itself, has not been clearly defined even in legal regulations. In legal studies and literature, it is presented in a fragmentary way and refers to specific areas of law.³⁶

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³² J. Widacki, P. Sarnecki, *Pojęcie bezpieczeństwa i porządku publicznego*, [in:] J. Widacki (ed.), *Ustrój i organizacja Policji w Polsce oraz jej funkcje i zadania w ochronie bezpieczeństwa i porządku*, Warszawa-Kraków 1997, p. 12.

³³ A. Osierda, *Prawne aspekty pojęcia bezpieczeństwa publicznego i porządku publicznego*, „Studia Iuridica Lublinensia” 2014, No. 23, p. 89.

³⁴ Ibid. and more broadly – M. Janik, *Policja administracyjna jako funkcja państwa – prolegomena*, [in:] *Przemiany doktrynalne i systemowe prawa publicznego. Studia dedykowane prof. W. Bednarkowi, collective work*. Olsztyn 2002.

³⁵ M. Stahl, *Cele publiczne i zadania publiczne*, Warszawa 2007, p. 97.

³⁶ *Electronic source*: <https://www.bibliotekacyfrowa.pl/Content/34474/016.pdf>, accessed: 14.11.2021.

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