HISTORICAL-CULTURAL AND LEGAL ASPECTS OF THE RIGHT TO PRIVACY AND SPATIAL INFORMATION. CHALLENGES RELATED TO THE DEVELOPMENT OF TECHNOLOGY: CONSTITUTIONAL STANDARDS (POLISH CASE)

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Abstract

Privacy and its protection is the subject of numerous studies. This concept does not have one definition. Privacy is determined before indicating the areas that it covers. Historical, cultural, social and civilizational changes influenced the way of understanding privacy. With time, the need to protect this value by law was created. No one undermines the right to privacy. However, the question arises whether the universal and fairly general approach to this law is sufficient for the challenges posed by modern civilization and its development, including technological development. In this context, attention should be paid to the threats to privacy that may be caused by the processing of data resulting from spatial information. Technological development makes it easier to obtain this information, which means that in this respect it is necessary to indicate certain limits of permissible interference in privacy. The analysis of Polish constitutional solutions shows that with current constitutional or international solutions, privacy standards can be developed and refined at the level of subconstitutional acts. The universal way of regulating the right to privacy in the Polish Constitution as in international law enables a better response to the challenges related to contemporary civilizational changes. It leaves a margin of discretion for legislature and state bodies, including courts and tribunals, to ensure the best possible level of protection. In this way, on the basis of constitutional standards, an impassable framework of action of public authorities in the sphere related to spatial information, including the collection and processing of specific data, is determined.

Key words: privacy, data protection, constitution, development of technologies, civilization, right to privacy

Introduction

Privacy and its protection is the subject of numerous studies, especially in the field of national and international human rights protection. The authors analyze the definition of privacy, subjective and objective scope of the right to privacy, as well as the components that make up this law. The research is made by foreign authors (see, e.g. PROSSER, 1960; GLANCY, 1979; GALLAGHER, 2010; PALMER, VERNON, VALENTINE, 2011) and also by Polish researchers (see, e.g. BARTA, MARKIEWICZ, 1999; BRACIAK, 2004; MOTYKA, 2010; PRYCIAK, 2010; RZUCIDŁO, 2014).

Considerations of privacy in a legal context appeared when people realized the importance of their personal goods in contact with the products of technology. This means that one of the premises for the juridization of privacy protection have just become transformations related to industrial and technological development. In this context, it should be considered whether the shape of the right to privacy, which was defined at the end of the 19th century and found protection at both national and international level, is adequate to the challenges related to the development of civilization and to the development of the modern technologies, including human functioning in cyberspace.

Particular attention, due to the development of technology, should be paid to spatial information. The data that is obtained in connection with this information may affect different spheres of the individual's privacy. On the basis of these data, you can get information that is not only useful for public administration and facilitate the performance of public tasks, including meeting the needs of residents, but they can also

help in the creation of an individual profile. This means that they can provide knowledge about the individual indirectly. It is also about the possibility of obtaining data by public authorities, which are not always necessary in a democratic state of law. The fact that access to spatial information is facilitated thanks to modern information systems created with the use of technology emphasizes the necessity of certain privacy guarantees.The question is whether the current guarantees and standards are sufficient or whether it is appropriate to articulate certain content in legal acts in order to make privacy more protected. We will try to formulate preliminary conclusions regarding this issue based on the analysis of Polish constitutional legal solutions.

In our article, as part of our research, we used the dogmatic method. We analyzed legal acts (domestic and international), case law (primarily the jurisprudence of the Polish Constitutional Tribunal, and, in the alternative, the jurisprudence of the European Court of Human Rights) and literature on the subject, to indicate the relationship between the constitutional regulation of privacy protection and the challenges posed by technological and civilization development, including spatial information issues. After the analysis, we came to the following initial conclusions.

The genesis of the phenomenon of privacy in terms of culture

Privacy in the contemporary understanding of this phenomenon is a fundamental value, included in the catalog of fundamental rights defined by the Charter of Fundamental Rights of the European Union of December 7, 2000. According to art. 7 of the Charter "everyone has the right to respect for his private and family life ...", while its art. 8 formulates the right to the protection of personal data, to whomever the data relates.

But earlier acts of international law also refer to privacy. For example, the Universal Declaration of Human Rights adopted by the UN General Assembly by resolution 217/III A on December 10, 1948 in Paris in art. 12 states that "Nobody can be subjected to arbitrary interference in his private, family, home or correspondence ...". The International Covenant on Civic and Political Rights of December 16, 1966, in art. 17 states that "No one shall be subjected to arbitrary or unlawful interference with his private life, family life, home or correspondence ...".

Also provisions of national law - starting with the Constitution of the Republic of Poland, which in art. 47 provides that "Everyone has the right to legal protection of private life, family life, honor and good name and to decide about his family life.", to the provisions of art. 23 of the Civil Code on the protection of personal rights - refer to privacy as a legally protected value.

Growth of the legislator's interference, or broader legislator in the sphere of privacy protection, along with the increase in the complexity of legal provisions in this area – e.g. of the Regulation of the European Parliament and of the Council of 27 April 2016. No. 2016/679 on the protection of individuals in Due to the processing of personal data and regarding the free flow of such data (GDPR) - it is in proportion to the development of new technologies and the intensity of privacy interferences. Meanwhile, the phenomenon of privacy is not a value that has always accompanied people.

Even in the Middle Ages, man remained part of the specific community in which he lived, and the cycle of his life was then subject to a division into professional and personal (private). Such connection of both spheres of life was reflected in the urban layout of cities, which, due to the limitation of defensive walls, could not develop freely, and therefore they were densely built-up. Consequently, the houses were long and narrow, divided into two levels, the first of which was intended for a workshop or a shop, while the other served as a residential part.

The latter was not divided into smaller rooms, because all household members - their hosts and their children, servants and employees, and even residents, benefiting from the host's protection - just as they worked together, so they rested together after work. The hall of the medieval house was never a private space, but the public, as they were eating together in it, guests were received there, but the meals were also made there. The medieval man, therefore, did not have space reserved only for himself and closed to others.

An indication of prestige was the possession of their own bed, which concerned only a few, who had a minimum of intimacy provided by a long curtain of curtains of bedchips for the night. The medieval community ruled the life of the individual, to the extent that the violation of the principles of the functioning of this community could lead to exclusion from the community - the so-called banition - which meant exile combined with a ban on maintaining any contact with outlaw (convicted), providing help, including shelter and loss of rights. According to the 14th century book of laws, "Outlaws are dead for the court."

The return in the approach from the relationship unit - collectivity, which resulted in the emergence of the idea of privacy, began with the emergence of bourgeois culture, which is the effect of growing in strength and increasingly influential middle class. It was a prototype of the middle class. The beginnings of this process should be sought in the Netherlands at the turn of the 16th and 17th centuries. The specific socio-political situation that existed then led to the emergence of the middle class as a social class rich

enough and strong politically but also culturally to impose its lifestyle on other classes. The United Provinces of the Netherlands, created in 1609 after 30 years of bloody wars waged against Spain, was a small state with a population not exceeding one quarter of Spain's population.

Nevertheless, this country had a powerful fleet, both military and trade, whose development lay at the basis of its economic strength. In its territory, cities thrived, so that in the 17th century, the Netherlands was the most urbanized part of Europe. These cities became strong centers of trade, which favored the growth of trade, and this led to the emergence of people involved in financing various ventures, which led to new financial innovations, such as the Amsterdam Stock Exchange founded in 1604. Cities such as Amsterdam became not only shopping centers, but also financial centers for the whole of Europe. The climate of tolerance prevailing in the Netherlands, which attracts refugees from other countries, such as, for example, Baruch Spinoza.

In the Netherlands, there was no strong aristocracy and nobility, as they were decimated in the wars against Spain and did not play a significant political role. The general political situation was also influenced by the fact that there was no strong monarchy in the Netherlands, and the head of the state of the so-called Stadhouder was subject to far-reaching restrictions in terms of power. All these political, socio-economic and religious conditions led to the fact that the Dutch bourgeoisie was not only numerous but also had strong political influence. The great prosperity of the United Provinces was also influenced by great geographic discoveries and the acquisition of colonies in Africa and Asia, especially South-East part of it.

The economic and political position of the Dutch bourgeoisie in the 17th century, it began to translate into a change in the existing lifestyle. It was manifested not only by the need to show external signs of abundance, which was manifested in urban architecture or the way of dressing, but also in the increase of comfort of life. One of the forms of this manifestation, which was the Dutch's special preference for the tulips brought in in 1594, led to the first speculative bank in the 1930s called "tulipomania" (MACKAY, 2001).

It began to feel the need to ensure intimacy, in the form of separate rooms, available only to a few and selected people. In these private places, one could lead a life unstitched without being observed by outsiders. They were therefore taken away from the medieval model of living together, replacing it with life separated from others, turned into private rooms, which appeared next to official rooms, where guests or visitors, or contractors and partners were received. This educated in the seventeenth century privacy reached in the eighteenth century to England, France and the German states, permanently changing the way of life of the middle classes. In the nineteenth century, this lifestyle became widespread in almost all of Europe, as a result of the changes brought by the first industrial revolution (MICHALSKI, 2017).

Its effect was the industrialization and growth of the importance of cities, as well as the dynamic development of the number of their inhabitants. Another factor that contributed to the popularization of the bourgeois life-style with one of its basic values, the need for privacy, was the political situation in Europe, starting with the July revolution in France in 1830 and the beginning of the constitutional monarchy, strengthening the political significance and the strength of the bourgeoisie. The revolutionary wave that spread throughout Europe (e.g. the Belgian Revolution of 1830) led to a change in the form of government in many constitutional countries based on strong liberal currents. These constitutions guaranteed fundamental freedoms and civic rights, with particular emphasis on the right to privacy, e.g. as a secret of correspondence.

Privacy as a legal category

As a legal category within the meaning of the right to privacy, privacy appeared for the first time in an article by two American lawyers, Samuel Warren and Louis Brandeis, *The Right to Privacy*, published in 1890 (WARREN, BRANDEIS, 1890). The right to privacy is included in this article as the right to be let alone. The reason to write this article was the dynamic development of the press in the second half of the 19th century and the great interest shown by it in the private life of public figures, which in the face of sometimes journalistic harassment, asked a question about the limit of interest, the transgression of which would violate the legally protected interest of the individual. In this context, the construction of the permission, or demands for exclusivity, separateness or even loneliness, which protects the individual from the unlimited curiosity of others, appeared.

Also in European legal thought of the nineteenth century, the concept of the right to privacy began to be formulated, defining the sphere subject to legal protection against interference by unauthorized persons. The right to privacy begins to arouse interest especially from the doctrine of civil law, which recognizes the manifestation of personal rights in it.

The decisive increase in the importance of privacy as a basic category in the field of civil rights falls on the period after World War II, which was undoubtedly due to the experience of totalitarianism and the resulting total negation of human rights, leading to the organization of a system of mass extermination of people. Hence, one of the first acts of international law after the end of World War II was - already mentioned

- the Universal Declaration of Human Rights of 1948. It began a new stage in the approach to privacy as a fundamental and universally recognized value which is to protected by international community.

Modern legal systems not only define the concept of privacy, but rather try to identify the spheres belonging to the individual, which should be protected by law. These spheres are treated as manifestations of privacy and fill the content of the concept of the right to privacy. These spheres usually include:

1. family life,
2. home esteem,
3. the secret of correspondence, which was one of those areas that were subject to legal protection at the earliest (e.g. in Poland, since the creation of courier mail in 1764, the secret of correspondence was guaranteed, the violation of which was possible only in cases of security threats to the state),
4. personal goods,
5. personal data.

Privacy in constitutional law – Polish case

In the above-mentioned perspective, it is worth paying attention to the manner of regulating privacy protection in Polish constitutional law. In the Polish legal tradition, such a broad regulation of a given issue occurs for the first time in a constitutional act. Neither the principle of self-determination nor the right to protection of private life, family life, honor and good name were *expressis verbis* expressed in earlier Polish constitutions. On the other hand, certain aspects of the autonomy of the individual were protected, such as personal freedom, protection of the secret of communication, protection of the inviolability of housing, freedom of movement or freedom of conscience and religion.

The Constitution of the Republic of Poland from 2nd April 1997 (Dz. U. Nr 78, poz. 483 with amendments) shows that the legislator treated this value comprehensively. Interestingly, in this act we will not find a single provision stating the protection of privacy or, more broadly, the right to privacy. The Constitution of the Republic of Poland does not use the wording "the right to privacy." This does not mean, however, that you can not talk about the constitutional right to privacy. It is impossible to give a precise definition of this law due to the nature of the sphere of privacy. The content of the constitutional right to privacy is determined by the analysis of individual constitutional norms (Safjan, 2002; Fleszer, 2015).

The constituent has decided to divide various components of privacy into separate regulations, in order to clearly ensure protection of individual spheres of human life.

The starting point of this protection is the dignity of a man which, in accordance with art. 30 of the Constitution of the Republic of Poland, is innate and inalienable and constitutes a source of freedom and human and civil rights. It is inviolable, and its respect and protection is the responsibility of public authorities. Therefore, the protection of privacy has its source in dignity (Complak, 2002; Garlicki, 2003; Fleszer, 2015). The right to privacy "flows" from the right to dignity and it is one of its aspects. Interpretation of the content of this law must take place therefore with regard to the right to dignity (Mączyński, 2014).

This approach is also confirmed by the jurisprudence of the Constitutional Tribunal (see, e.g. judgment CT of 4.04.2001, no. K 11/00, OTK ZU 3/2001, item 54; judgment of 7.05.2001 r., no K 19/00, OTK ZU 4/2001, item 82 and judgment CT about right to privacy of 9.07.2009., no SK 48/05, OTK ZU 7/A/2009, item 108) and Supreme Court (see, e.g. judgment SC of 25.04.1989 r., no I CR 143/89 and judgement SC of 21.03.2007 r., no. I CSK 292/06).

The Constitutional Tribunal stated that respect for privacy is closely related to the constitutional requirement to protect human dignity. Privacy at the constitutional level is protected multi-faceted. Man's dignity requires respect for his strictly personal sphere, so that he would not be exposed to the necessity of "being with others" or "sharing with others" their experiences or intimate feelings (see. e.g. judgment CT of 12.12. 2005, no. K 32/04, OTK ZU 11/A/2005, item 132; judgement CT of 5.03.2013, no. U 2/11, OTK ZU 3/A/2013, item 24).

The private sphere is built from different circles, more or less open in the legal context to the external and constitutional impact, the approval for imperious entry by the authorities is not the same. In subsequent provisions, the Constitution of the Republic of Poland concretizes values and goods that fall into the value of privacy, to confirm their protection by the state. In this context, the most important constitutional regulations should be considered:

Art. 47 – "Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life".

Art. 49 - "The freedom and privacy of communication shall be ensured. Any limitations thereon may be imposed only in cases and in a manner specified by statute".

Art. 50 - " The inviolability of the home shall be ensured. Any search of a home, premises or vehicles may be made only in cases and in a manner specified by statute".

Art. 51 - protecting personal data, which states that – "1. No one may be obliged, except on the basis of statute, to disclose information concerning his person.
2.Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law.
3. Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.
4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.
5. Principles and procedures for collection of and access to information shall be specified by statute".

In the judgment of 20 January 2015, the Constitutional Tribunal stated that "Being one of the basic elements of the democratic state's legal axiology, constitutional protection of privacy means in particular the ability to independently disclose to other entities information about themselves, as well as to control this information, even if they are in the possession of other people (information autonomy of the individual) and the possibility of self-determination about their personal life in terms of the subject, subject and time (decision autonomy of the individual). In the sphere of information autonomy, constitutional norms guarantee the unit protection against acquisition, processing, storage and disclosure, in a way that violates the rules of suitability, necessity and proportionality of the *sensu stricto*, information including o: a) health condition (quoted judgments U 5/97, U 3/01); b) financial situation (quoted judgments K 21/96, K 41/02); c) family situation (quoted judgments SK 40/01, K 20/03); d) political or social past (quoted judgments K 24/98, K 7/01, K 31/04); e) name or image (quoted judgment K 17/05, K 25/09) or f) other information necessary for the activities of public authorities (cited judgments K 4/04, K 45/02; K 54/07, K 33/08). In the sphere of decision-making autonomy, constitutional norms guarantee the individual protection against violation of the rule of suitability, indispensability and proportionality of the senses strictly with interference in the decisions of the unit, among others about: a) own life or health (quoted judgment on SK 48/05, K 16/10); b) shaping family life (quoted judgments K 1/98, K 18/02); c) bringing up children in accordance with one's own convictions (cit. judgment on reference number U 10/07); d) the birth of a child (see judgment on reference number K 26/96)"(see: judgment CT 20.01.2015, no. K 39/12; OTK ZU 1/A/2015, item 2).

The normative state contained in the Constitution of the Republic of Poland of 1997 confirms that various spheres of privacy have been subject to constitutional protection from private life in strict sense to family life. The legislator particularly emphasized the issue of personal data protection, which was regulated in detailed manner in a separate provision. However, both doctrine and case law indicate that the right to personal data protection can not be analyzed in isolation from the right to protection of private life, family life or the right to decide about your personal life. This is confirmed by the analysis of the jurisprudence of the Constitutional Tribunal, which already in the first judgment regarding the privacy stated that the right to privacy also includes the protection of data relating to the citizen (see judgment CT of 24.6.1997, no K 21/96, OTK 2/1997, item 23). Tribunal said that the right to privacy is guaranteed in the aspect of the protection of personal data by art. 51 of the Constitution of the Republic of Poland. The latter provision is intended to concretize the right to privacy in procedural aspects (see: judgement CT of 19.5.1998, no U 5/97, OTK 4/1998, item 46).

Constitutional Tribunal noted that information autonomy, understood as the right to decide on disclosing information about oneself to others and to exercise control over that information, constitutes a component of the right to privacy (see, e.g. judgement CT of 20.11.2002, no. K 41/02, OTK-A 6/2002, item 83 and judgement CT of 13.12.2011, no. K 33/08, OTK ZU 10/A/2011 , item 116). The separation of art. 51 of the Constitution of the Republic of Poland is justified primarily by the typology of interference covered by its regulation, making it easier to perceive them and simplifying the argument that violation of constitutional standards *in casu* has occurred (see: judgement CT of 20.11.2002, no. K 41/02, OTK ZU 6/A/2002, item 83).

Art. 51 Constitution of the Republic of Poland of 1997 r. helps to protect the information autonomy of an individual against the threats related to civilization changes. It sets the impassable sphere of interference in the individual's privacy. This provision also sets the legislator's framework in the sphere of privacy.

In addition, the Constitution of the Republic of Poland of 1997 contains one more general guarantee that the right to privacy will be duly protected. Namely, it is a proportionality clause expressed in art. 31 para. 3 of the Constitution. According to this provision: "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, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights".

The established jurisprudence of the Tribunal state, that, in formal terms principle of proportionality requires restrictions on the use of constitutional freedoms and rights to be introduced by statute. It forces the legislator to define all the basic elements of a given restriction, so that the reading of the provisions of the act would allow to recreate its complete outline. The legislator is not allowed to accept blanket solutions, leaving the authorities of the executive power the freedom of final shaping (see: judgment CT of 12.01.2000, no. P 11/98, OTK ZU nr 1/2000, item 3). It means that "as long as the statutory rank of the unit's restrictions on the status of an individual is not enough to acknowledge their substantive legitimacy (...) *a contrario*: failure to comply with the statutory form (...) must lead to disqualification of a given regulation as being inconsistent with (...) art. 31 para. 3 of the Constitution"(see, e.g. judgment CT of 19.05.1998, no. U 5/97, OTK ZU OTK ZU 4/1998, item 46; judgment CT of 12.01.2000, no. P 11/98, OTK ZU 1/2000, item 3).

In the material sense, the principle of proportionality allows only such restrictions that do not violate the essence of freedom or subjective right, and only when they are necessary in a democratic state for its security or public order, or for the protection of the environment, health, public morals, or freedoms and rights. other people. In order to determine whether the legislator fulfilled the condition of necessity, it should be checked: whether the regulation examined in this respect could lead to the consequences intended by him; is it necessary to protect the public interest it is to serve; and whether its (potential) effects are in a proper proportion to the burdens imposed on it by the unit (see: judgment CT 29.09.2008, no. SK 52/05, OTK ZU 7/A/2008, item 125).

The above analysis shows that the Constitution of the Republic of Poland guarantees a standard of protection of privacy, which must be observed by public authorities in the process of establishing and applying the law. However, the effectiveness of protection depends not only on whether the highest act in the state includes confirmation of the right to privacy, but first and foremost it depends on legal solutions developing constitutional provisions. The provision of specific guarantees also depends on specific actions taken by the authorities to protect the individual.

The Polish legal system provides for the possibility of controlling the compliance of legal acts with the constitutional right to privacy. Such an assessment is made by the Constitutional Tribunal. In the case of individual cases, in the process of applying the law, the aggrieved party may also invoke constitutional provisions related to the protection of privacy, as in accordance with art. 8 para. 2 of the Constitution of the Republic of Poland, "The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise".

The sphere of privacy is broadly defined in jurisprudence, and therefore it is also possible to refer to those threats that result from civilization and technological development, in particular those that are related to the protection of information autonomy in connection with the functioning of a human being in cyberspace.

Constitution of the Republic of Poland of 1997 and international standards of protection of privacy

In addition, it must not be forgotten that the constitutional standard of human rights protection is shaped by international law. According to art. 91 para. 1 of the Constitution, "The ratified international agreement, after its publication in the Journal of Laws of the Republic of Poland, forms part of the national legal order and is directly applicable, unless its application depends on the issuance of the Act". Article 89 para. 1 point 2 Constitution says that ratification by the Republic of Poland of an international agreement and its termination requires prior consent expressed in the act, if the contract concerns freedom, rights or civic obligations specified in the Constitution. This means that acts of international law defining the system of human rights protection that have been ratified by Poland are part of the Polish legal system. The constitution of this type of contract is included in the sources of universally binding law (see: art. 87 para. 1 Constitution).

In this way, international agreements regarding the protection of human rights can be either directly applicable or if they are ratified with the prior consent expressed in the statute, they can be a model for checking the constitutionality of normative acts, including statutes.

As far as privacy is concerned, the international standard, which is applied in Polish law, primarily concerns the solutions of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights in Strasbourg, which is based on it. The Constitutional Tribunal derives from this standard, analyzing the hierarchical compliance of legal provisions (SYRYT, 2013).

The Constitutional Tribunal also repeatedly pointed to the necessity to read constitutional provisions regarding the protection of privacy and informational autonomy through the prism of values and standards resulting from the European Convention on Human Rights, expressed in the case law of the European Court of Human Rights.

As an example, it is necessary here to state the case before Constitutional Trybunal on operational activities made by state services. In the judgment of 30 July 2014 (no. K 23/11, OTK ZU 7/A/2014, item 80), the Tribunal recalled important rulings of the European Court of Human Rights related to the protection of privacy and explained the meaning of art. 8 of the European Convention on Human Rights (see, e.g. judgements ECHR of: 6.09.1978, Klass and others v. Germany, no. 5029/71; 24.04.1990 r., Kruslin v. France, no 11801/85; 16.02.2000, Amann v. Switzerland, no 27798/95; 29.06.2006, Weber and Saravia v. Germany, no. 54934/00;1.03.2007, Heglas v. Czech Republic, no 5935/02; 3.04.2007, Copland v. United Kingdom, no. nr 62617/00; 1.07.2007 r., Liberty and others v. United Kingdom, no. 58243/00; 28.06.2007, Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria, no 62540/00; 10.02.2009, Iordachi i inni v. Molavia, no. 25198/02; 23.10.2012, Hadzhiev v. Bulgaria, no. 22373/04; 27.10.2012, Savovi v. Bułgaria, no. 7222/05; 4.12.2012, Lenev v. Bulgaria, no. 41452/07; 25.06.2013, Valentino Acatrinei v. Romania, no.18540/04.

Constitutional Tribunal noted that article 8 para. 1 Convention refers to the broadly understood right to respect for the private sphere of human life, thus constituting the most general affirmation of the individual's autonomy in the area of shaping all aspects of her life and her own personality. The essence of this right is to provide each unit with a sphere of privacy (autonomy) protected from external interference, coming from both the state and private entities (GARLICKI, 2010b).

The above findings confirm that international standards for the protection of privacy are present in the Polish legal system, in particular in the jurisprudence of the Constitutional Tribunal. Thanks to this, the legislator has clear instructions on how to create law while respecting the right to privacy. Authorities applying the law have a defined framework that they can not exceed in order not to violate Poland's binding international agreements.

Spatial information and privacy and individal autonomy protection

When analyzing the standard of privacy protection, attention should be paid to the issue of spatial information. It has been accompanying many areas of human activity from the beginning, also in the sphere of his private life.

Spatial data obtained in various forms, eg by remote sensing, photogrammetry, geodesy, cartography, services conducting observations and measurements, monitoring, inventories, and statistical surveys, are used for spatial analyzes. They enable the creation of spatial information, which enables quick, repeatable and comparable determination of the current state of objects, phenomena and processes, their causes and predictable state in the future. These data are useful for public authorities, as they form the basis for public authorities to take spatial decisions of significance for society and the national economy. This data is also useful for private entities in relation to satisfying their social, cultural, economic needs, etc. They have an impact on making social and economic decisions (see: http://www.igik.edu.pl/pl/a/Informacja-przestrzenna-def, access 4.06.2018).

Spatial information is defined as information obtained through the interpretation of spatial data. It concerns objects such as facts, events, objects, phenomena, processes and ideas (see the definition Polish Assotiation of Spatial Information; https://www.ptip.info/LMB/INFORMACJA-PRZESTRZENNA;access: 4.06.2018).

Currently, the importance of spatial information is increasing. The reason for this is the ease of acquiring spatial data and the possibility of their quick processing. This is mainly due to the development of information technologies, in particular the development and widespread access to devices that can display spatial information from embedded databases or available network services on their screens, as well as showing the current user position, determined by the built-in GPS receiver (IZDEBSKI, 2017).

When analyzing the concept of spatial information, one can not forget about the spatial information system. It is a system for obtaining, processing and sharing data containing spatial information and accompanying descriptive information about objects highlighted in the part of the space covered by the operation of the system (GAŹDZICKI, 1990).

One of the basic elements of the spatial information system is a database containing information (spatial and descriptive) about the real world objects represented in the system. In order to be able to create and effectively implement all the tasks posed before the spatial information system, it is necessary to have other components of it, which include the appropriate software, hardware and people. The basis for the functioning of the spatial information system is the collection of relevant data on real world objects being the object of his interest.

Although many elements of the space around us can be measured on a regular basis. However, an important role in the use of spatial information is played by reference data, some of which are of an official nature and are stored in so-called public registers. The most important of them are in poviat starosts and commune (gmina) offices. It is about address numbers (database in communes) and registration plots

(database is in poviat starosties or cities with poviat rights; see more in *Geodetic and cartographic law* [*ustawa z 17.05.1989 -Prawo geodezyjne i kartograficzne*, Dz. U. z 2017 r. poz. 2101, ze zm.]).

When creating solutions related to spatial information, it is noted that in addition to the need to create specific technical tools related to the collection and processing of spatial data, one should also:

1. establish procedures for collecting data that will be subject to analysis and shape spatial information;
2. specify the privacy policy and respect the data ownership rights (STĘPNIAK).

The above arrangements mean that spatial data collected and processed within spatial information is not indifferent to the privacy of the individual. Due to the possibility of combining spatial information about a given person on the basis of different data sets, public authorities may interfere in the protected zone of art. 47 and art. 51 of the Constitution of the Republic of Poland.

In particular, such data may be used by law enforcement and state security services in the prosecution and detection of criminal offenses, including terrorist activities. Therefore, when using spatial data that make up spatial information, these authorities must apply constitutional standards regarding the protection of information autonomy and the right to privacy. Their actions must have a statutory basis and be proportionate. These standards were recalled and summarized by the Constitutional Tribunal in the judgment of 30 July 2014 (no. K 23/11, OTK ZU 7/A/2014, item 80). They are still valid and could be adopted to spatial data and spatial information. In opinion of Constitutional Tribunal, in particular:

1. the collection, storage and processing of data concerning individuals, and especially the sphere of privacy, is only allowed on the basis of a clear and precise provision of the Act;
2. it is necessary to specify in a statute the authorities of the state authorized to collect and process data about the unit, including data related to spatial information, which may be used, e.g. in the course of operational activities;
3. in the Act, the premises for secretly obtaining information about persons, which are: detecting and prosecuting only serious crimes and preventing them must be specified; the act should indicate the types of such crimes; it is also about using spatial information
4. it is necessary to specify in the act type of means of obtaining information as well as types of information obtained through individual means;
5. it is necessary to precisely specify in the act the rules of dealing with materials gathered in the course of operational and reconnaissance activities, in particular the rules for their use and the destruction of unnecessary and unacceptable data;
6. it is necessary to guarantee the security of the collected data against unauthorized access by other entities (see also, e.g. judgments CT 12.12.2005, no. K 32/04; OTK ZU 11/A/2005, item 132; 23.06.2009, no. K 54/07, OTK ZU 6/A/2009, item 86).

The above means that the Polish constitutional standard of privacy protection and information autonomy must be used also in connection with spatial information and the functioning of spatial information systems. The general protection related to the protection of personal data of an entity referred to in the Constitution of the Republic of Poland also results in the protection of an individual in connection with data collected and processed for the purpose of creating spatial information. The limits for the activity of power in this area are set by the Constitution. In particular, the rules for the use of certain data must be specified in the Act and may be used when referring to the private sphere of the individual only when it is necessary in a democratic state of law.

Conclusions

Analysis of the jurisprudence of the Constitutional Tribunal and the European Court of Human Rights shows that the clash with modern technologies often has its finale in the decisions of these two legal protection authorities. The reference criterion is always the charge of interfering in various areas of privacy, due to the operation of public authorities. Matters decided in the above-mentioned tribunals relate primarily to:

1. provisions of laws or regulations that allow the use of specific technical and IT measures to implement state tasks (e.g. prosecution and detection of crimes, etc.). The Constitutional Tribunal checks if this provisions are in accordance with Constitution, including right to privacy. The Constitutional Tribunal judgments make standards for legislation which help to cope with challenges of technological and civilization development;
2. the use of certain techniques disproportionately, with interference in privacy. This is the matter of European Court of Human Rights, and in domestic area – the matter of courts, which can protect privacy by using directly provisions of Constitution on protection of privacy;
3. failure to provide protection by the state in a situation where private entities use technology and violate privacy (ECHR).

The analyzed rulings prove that the broad formula of the right to privacy defined in the Constitution of the Republic of Poland and the European Convention on Human Rights is so universal that it allows for coverage of cases of interference in privacy or even an invasion of privacy when it comes to new technologies. Authorities applying the law are able to derive the need for protection from the classically formulated right to privacy also when it concerns the functioning of a person in cyberspace.

The protection of privacy as a legal category appeared as a result of the reaction to intrusions into personal goods by inventions created in connection with technological development. This means that one of the factors that influenced the jurisdiction of privacy protection was technological development. It allowed for an unprecedented interference in personal goods and, more broadly, in the privacy of the individual. The manner of shaping the right to privacy in international acts of human rights protection, as well as in the Polish Constitution, shows that the content of this law is universal. Courts and tribunals, in the face of challenges related to the use of new technologies and human functioning in cyberspace, may rely on this right to protect the individual. The value of privacy is unchanged.

Because there is no one rigid definition of privacy, and this concept is defined primarily by defining the areas of life of the individual that it covers, we can derive protection in connection with the threats resulting from technological and civilization development.

Spatial information and spatial information systems based on specific data undoubtedly refer to the sphere of the individual's privacy. Therefore, it should be stated that in this respect the constitutional standards for the protection of the right to privacy will apply. They determine the impassable limits of interference of the legislator and bodies applying the law in the sphere of individual autonomy. Therefore, for the activities of public administration related to spatial information, when it affects a human being, the same measure as for other activities concerning personal data should be used. It is also important to ensure respect for specific data collected and processed in relation to spatial information not only by the state, but by private entities. In this way, trust in the state is built. By means of spatial information systems, the state can carry out the tasks assigned to them for the common good.

It should be stated that the universal way of regulating the right to privacy in the Polish Constitution as in international law enables a better response to the challenges related to contemporary civilizational changes. It leaves a margin of discretion for law enforcement agencies, including courts and tribunals, to ensure the best possible level of protection.

If constitutions or international agreements regulate privacy issues in a rigid way, this could limit the right to privacy. Meanwhile, with current constitutional or international solutions, privacy standards can be developed and refined at the level of subconstitutional acts. The change of the Constitution or international agreement is connected with the necessity to launch specific and complicated procedures. Making acts based on designated standards better protects the individual against excessive interference with its rights.

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