

## SUMMARY

**of the doctoral dissertation by Magdalena Średnicka-Bugajska, M.A., written under the supervision of Wioletta Jedlecka, Ph.D., entitled:**

***Panoptic techniques and the principle of proportionality. Analysis of regulations and practice of their application in the Polish legal system***

The following doctoral dissertation touches on the sphere of two areas in the legal sciences - normativity and practicality. As the title suggests, the dissertation addresses issues relating to the principle of proportionality, as expressed in Article 31(3) of the Polish Constitution, on the one hand, and panoptic techniques, on the other. This term, inspired by the work of French author Michel Foucault, refers on the grounds of this dissertation to the disproportionate legal measures in force in the Polish legal system.

It should be emphasized that the choice of the topic of the dissertation was guided by the assumption of an irresolvable conflict that exists between the postulated vision of the principle of proportionality and the content of laws characterized by a high degree of interference in the constitutional rights and freedoms of the individual (primarily in the field of obtaining various types of information about individuals - such as operational control, data retention or maintaining databases). To this end, various research methods were used, including the historical method (which consists in recognizing the genesis of the principle of proportionality and its evolution), the descriptive method (which consists in examining the principle of proportionality from a doctrinal, theoretical and philosophical-legal perspective, taking into account linguistic, functional and systemic interpretation as it relates to the principle of proportionality) or the dogmatic method (which consists in a linguistic and logical analysis of Article 31(3) of the Constitution of the Republic of Poland and other legal provisions, such as the panoptic techniques in force).

The main purpose of the study was to assess the effectiveness of the principle of proportionality in the process of lawmaking and application, by comparing the normative sphere with legislative and jurisprudential practice in the field of selected sovereign powers that are vested in specialized subjects (the police and special services). This was preceded by an analysis of the normative content of the principle of proportionality. For this reason, the consideration begins with a historical discussion of the concept of restraint (starting from antiquity), and then focuses on the normative content of the principle of proportionality in international and European law, and above all Polish law. Part One of the doctoral dissertation is devoted to this, which also includes conclusions drawn from the analysis

of the postulated vision of the principle of proportionality. In the course of the research, serious discrepancies in interpreting the principle in question, both in case law and in the views of individual representatives of the legal sciences, were identified (leaving their author's evaluation for the culmination of the dissertation).

Part Two of the dissertation deals with panoptic techniques - which are defined for the purposes of the work as disproportionate legal remedies within the meaning of Article 31(3) of the Polish Constitution. It should be emphasized, however, that not every disproportionate legal measure is an expression of panoptic techniques - the term, for the purposes of this dissertation, is intended to define only legal measures that create an intentional field for abuse by official authority (and thus refers to legal measures that either do not provide for protective measures for the rights or freedoms being depleted, or that do, admittedly, provide for protective measures, but only of an apparent nature, and thus remain useless to the individual in practice). Part Two of the work analyzes selected legal provisions regulated by such normative acts as, among others: the Law of July 16, 2004. - Telecommunications Law; the Law of July 18, 2002 on the provision of electronic services; the Law of November 23, 2012. - Postal Law; the Law of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and emergencies caused by them; the Law of June 10, 2016 on anti-terrorist activities.

Part Three of the dissertation is a combination of issues relating to the principle of proportionality and the critical philosophy of Michel Foucault, along with his proposed concept of disciplinary power. It should be emphasized that analytical research in the area of introduced legal regulations raises serious doubts about their compliance with Article 31(3) of the Constitution of the Republic of Poland, and the conclusions drawn from the synthesis of the postulated state with the content of existing laws can be described as devastating. This part of the work evaluates the existing statutory regulations in terms of Article 31(3) of the Constitution of the Republic of Poland, which made it possible to identify a catalog of panoptic techniques in force in the Polish legal system - that is, legal regulations (sanctioning the powers of the sovereign entities) that are not compatible with the principle of proportionality - and therefore can be considered unlawful. The causes and consequences of the collision occurring were also considered. Conclusions from the comparison of the normative sphere with legislative and jurisprudential practice are pessimistic, but - given that panopticism is in fact exactly what it is aiming at - the following dissertation also presents postulates aimed at halting the ongoing process of decadence of individual rights and freedoms. It should be emphasized that enhancing the effectiveness of the principle of proportionality requires both normative

(for example, in terms of institutions safeguarding constitutional rights and freedoms) and empirical (occurring in social processes) changes. Although the conclusions of this dissertation - like Michel Foucault's philosophy of power - may seem extremely pessimistic - the dissertation is intended to lead to positive changes in the scope of the of Polish legal culture, especially as it relates to the principle of proportionality and the right to privacy.

**Keywords:** principle of proportionality, proportionality, concept of moderation, principle of justice, panopticism, Panopticon, panoptic techniques, power, disciplinary power, discipline, hierarchy, surveillance, operational control, Anti-Terrorism Act, surveillance law, data retention, telecommunications data, postal data, internet data, special use of firearms, terrorism, prepaid, Home Quarantine, databases, metadata, artificial intelligence, AI

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