

Human Rights Protection Systems

Limitations to human rights and freedoms

Human Rights Protection Systems
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Right to respect for private and family life

Right to marry

Case study:

Babiarz v. Poland

ECtHR, January 10, 2017

(application no. 1955/10)

Case study

Right to marry

- legal recognition for same-sex couples: Oliari and Others v. Italy [July 21, 2015, 18766/11 and 36030/11]
- refusal to allow a prisoner to marry in prison: Frasiak v. Poland [January 5, 2010, 22933/02]
- elderly people: Delecolle v. France [October 25, 2018, 37646/13]

Justified limitations to human rights

- prescribed by law
- legitimate aim
- necessary in the democratic society (proportionality principle)

ECHR – ARTICLE 8:

Right to respect for private and family life

(...)

- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

ECHR – ARTICLE 9:

Freedom of thought, conscience and religion

(...)

- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

ECHR – ARTICLE 10: Freedom of expression

(...)

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ECHR – ARTICLE 11:

Freedom of assembly and association

(...)

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

POLISH CONSTITUTION – 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, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.*

POLISH CONSTITUTION – ARTICLE 31 para. 3:

- formal and material premises
- the principle of proportionality
- the prohibition of violation of the essence of freedoms and rights

Formal premises

The principle of exclusivity of the statute – some of the most important issues (including limitations to human rights and freedoms) should be regulated only in the statute (see – judgment of the Polish Constitutional Tribunal: May 19, 1998, U 5/97)

The requirement of completeness of the statute – especially in the regulations of a repressive nature (criminal law, tax law) (see – judgment of the Polish Constitutional Tribunal: May 11, 1999, P 9/98)

Material premises (constitutional values)

- security or public order
- environmental protection
- health
- public morals
- freedoms and rights of other persons

The principle of proportionality – the adoption of a statutory solution that does not exceed a certain degree of severity and does not constitute, due to its nature and effects, excessive interference

It is important to maintain **the proportion** between the scope of interference and a public interest which is subject to protection (see – judgment of the Polish Constitutional Tribunal: February 25, 1999, K 23/98).

Criteria for assessing the application of the principle of proportionality

- **necessity** – is interference in the sphere of rights and freedoms indispensable?
- **usefulness** – may the introduced regulation in practice lead to the achievement of the intended objective?
- **proportionality *sensu stricto*** – are the imposed restrictions (the degree and scope of interference) proportionate to the achieved benefits?

The prohibition of violation of the essence of freedoms and rights

To determine the essence of every right and freedom, it is necessary to search for:

- **certain essential content** (core), the restriction of which would be tantamount to elimination of freedom or rights;
- **so-called additional elements**, modified in various ways without destroying the identity of a given right or freedom.

LITERATURE

Essentials:

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Extra:

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