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The Crisis of Security of an Individual in the European Union in the Context of Refugee Rights

Kryzys poczucia bezpieczeństwa jednostki w Unii Europejskiej w kontekście praw uchodźców

SUMMARY

Globally, it is worth stressing that international law, European law and national laws must fulfill the same standards, considering the human rights laws. Since the end of the Second World War, the sphere of international human rights law, including the set of rights of human beings, increased tremendously. In the sphere of human rights, the set of refugees' rights is one of the most important. On the other hand, the sphere of human rights since September 11 had to face the problems of security on a global scale. Today, security impacts the governments, international organizations, NGOs as well as human beings. Let us say that security influences both local and global policy. From this point of view, the article analyzes an important question: Is the human rights system able to function properly with the growing lack of security both in international and regional relations? Can the European Union and its Member States afford total acceptance of international refugee rights regulations referring to African natives? The article refers to the facts from the last few years which totally changed the attitude to human rights laws. It seems that today international organizations such as the United Nations and its specialized agencies should again work on the system of human rights referring to refugees, including legal aspects of counterterrorism. The author also takes into account the necessity of cooperation between the governments in a wider scale, including mutual cooperation and legal activity.

Keywords: security of EU citizens; refugees' rights; migration crisis in the EU; refugee procedures; security law v. human rights

When Mohamed Bouazizi, an unemployed Tunesian street vendor was setting himself ablaze on 17 December 2010 as a protest against his dramatic financial situation, he probably did not expect that his desperate deed would cause a string of developments, a genuine chain reaction in the form of a huge movement spreading across most Arabian countries, resulting in many coups and revolutions,

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emergence of extreme Islamic political movements and unprecedented migration since the Second World War. I am referring here to the so-called Arab Spring or Arab Awakening. The event sparked a wave of demonstrations, transforming into increasingly fierce forms, involving clashes with the police and security services. This led to the overthrow of President Zine El Abidine Ben Ali and the suspension of the activities of one of the Tunisian constitutional authorities, namely the Democratic Constitutional Assembly. In a very short time, over the period of two weeks, a revolution began in Egypt as a result of a terrorist attack[1], which resulted in the resignation of President Hosni Mubarak[2]. In late December of 2010, there were also protests in Algeria. In January, riots covered Jordan and Yemen, while in February, a civil war broke out in Libya, resulting in the death of the long-time leader of the state, Muammar Gaddafi[3]. Massive protests and riots erupted in Saudi Arabia, Djibouti, Iraq, Kuwait, Morocco, Oman, Palestine, Somalia, Sudan and Syria. As of 1 August 2015, civil wars were already waged in Libya, Egypt, Syria, Somalia, Sudan. Looking from the perspective of applicable norms of respective national laws, it can only be concluded that they are subject to the principle *inter arma silent leges*[4], formulated as early as in the Roman Empire. Regarding the applicability of norms of international law, one can only suggest a thesis that the United Nations, *via* the Secretary-General, calls for the fulfilment of humanitarian law norms in these countries, which in practice translates into the withdrawal of all NGOs and representatives of the International Red Cross from conflict areas due to the imminent threat to the security of their personnel[5].

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[1] Journalistic publications and the scholarly literature published worldwide point out that the revolution in Egypt began on 25 January, which is inconsistent with the facts. The truth is that the revolution began with a terrorist attack of January 1 on the Christians praying in the Alexandria Cathedral. The Al-Qiddissine Cathedral is a place of worship for Copts who have preserved their Christian faith since Apostolic times. At the time of assassination, the number of Copts in Egypt was estimated at 15 million followers. A total of 35 people died and 150 were wounded during the assassination. The Egyptian Muslim Brotherhood, linked to Al-Qaeda, admitted to the assault. See *Egypt Christians vent anger over bombing*, www.theaustralian.com.au/news/world/egypt-christians-vent-anger-over-bombing/news-story/ec16702e6eb0aa60b8ec3700598b303b [access: 18.03.2019].

[2] As Hosni Mubarak was brought down, he was tried in court and sentenced to a lifetime imprisonment on 2 February 2012. For more, see D.D. Kirkpatrick, *New Turmoil in Egypt Greets Mixed Verdict for Mubarak*, "New York Times", June 2, 2012.

[3] Muammar Gaddafi was captured as a result of over nine months of manhunt by the rebels. He was not charged, however, because on 20 October 2011, having been already captured, he was fatally shot in the head with light firearms by a member of the group of people directly involved in his capture. For more, see K. Fahim, A. Shadid, R. Gladstone, *Violent End to an Era as Qaddafi Dies in Libya*, "New York Times", October 20, 2011.

[4] A Roman legal maxim, which points to the "silence" of the law during hostilities. In the modern age, this rule was definitely invalidated during World War II in the system of *common law*, including by the U.S. Supreme Court in cases *Hirabayashi v. United States* and *Yasui v. United States*.

[5] A. Tottos, *About the Migration Policy in EU*, "PhD Tanulmanyok" 2012, Vol. 11, pp. 609–614.

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From the perspective of legal norm, the situation could be defined as a complete chaos, which has promptly caused the emergence of extremely radical movements, leading to the form of structures referred to as ISIS – the so-called Islamic State[6]. The organization of the Islamic State operates under the name: The Islamic State in Iraq and the Levant (or Islamic State of Iraq and Sham, *ad-Dawlah al-Islāmiyah fī 'l-'Irāq wa-sh-Shām*) and as of 30 July 2015, it controls regions of northern Iraq and Syria and brings together approx. 90 thousand fighters. Undoubtedly, one of the major organizations leading to the formation of ISIS is the Islamic State in Iraq that was established during the US intervention in Iraq in 2003. During the 12 years since inception, the organization has subdued the majority of smaller extremist organizations in Iraq, Syria and Egypt. In June 2014, during the Iraqi-Syrian campaign, the leader of the organization, Abu Bakr al-Baghdadi announced the establishment of the Caliphate to represent all Muslims in the world. At the same time, the actions taken in 2014 were aiming at capturing part of the Lebanon's territory by ISIS. ISIS operations have been taken in all possible directions in order to widen their zones of influence. An example of this is the subjugation of Boko Haram, an extremely radical terrorist organization operating in the territories of Nigeria and Chad[7]. ISIS was subject to an intervention immediately after a mass extermination of several thousand Christians and Yazidis[8], committed by the organization in northern Iraq in August 2014. The participants in the operation against ISIS include the United States, the United Kingdom, Australia, France, Qatar, Saudi Arabia, Bahrain, the United Arab Emirates and Turkey. The actions taken to date (August 2015) did not result in the intended effects. In retaliation, ISIS took effective efforts to conduct terrorist attacks in France, Tunisia, Thailand, Nigeria, Chad and South Africa. Methods used by ISIS, including mass executions of captives by beheading[9], the common use of tortures, rape and sexual slavery[10], have provoked widespread protest of the international opinion in the European Union, the United States and Israel.

[6] In view of the principles of international practice, as well as under applicable regulations of this nature, the Islamic State cannot be referred to as a subject of international relations and law. For the time being, this organization does not meet the requirements necessary to recognize its statehood in the strict sense.

[7] Boko Haram recognized the authority and subjugated itself to ISIS in a declaration given by its leader Abubakar Shekau on 13 March 2015.

[8] Yazidism is a religion created in the 12th century. It combines elements of Islam, Christianity and Judaism. Its adherents are scattered across Iran, Syria, Armenia, Georgia. Yazidis believe that they originated from a descendant of Adam, they pray five times a day facing towards the sun, they practice circumcision, baptism, and believe in reincarnation. They recognize Abraham and Muhammad as prophets, and consider Jesus an angel. Within their groups, a caste system is used, dividing people into three castes, i.e. sheikhs, *pīrs* and *murīds*. See also *Encyklopedia katolicka*, t. 7, Lublin 1997, p. 1443.

[9] E. Griswold, *Is this the end of Christianity in the Middle East?*, "New York Times", July 22, 2015.

[10] E. Allen, *Kidnapping and Sex Slavery: Covering ISIS' Religious Justification for Rape*, "New York Times", August 14, 2015.

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The above-mentioned events result in, contrary to the wildest expectations of the community and decision-makers in the European Union, one of the most unpredictable schemes in the post-war legal order, manifested by an inflow of enormous number of foreigners to the countries of the European Union.

The aim of this study is to point to problems that arise in connection with the destabilization of the international situation in the region of North Africa and the Middle East. The reader may reflect on threats resulting from the current migration trends and assess through the prism of the liberal policy of the European Union in this area and through the priority of application of international law norms in the refugee-related practice[11].

Social security is one of the aspects related to security in the sphere of internal relations. The concept of social security appeared in the world literature quite recently, namely in the nineties, and concerns the idea of identity in terms of national and ethnic identification. As J. Czaputowicz rightly points out, social security concerns restrictions on freedom of expression, prohibiting the use of a native language, restriction in terms of culture, name spelling, using national costumes or deportations. This makes it possible to study the cases where the areas of the state and the ethnic community do not coincide[12]. Scholars pay attention to the fact that where national borders and ethnic borders coincide, state security and social security are inseparable[13]. If, however, these borders do not overlap, and the state seeks to assimilate national minorities and incorporate them into the dominant culture, then state security and group security become antagonistic. Undoubtedly, this approach is only true in part. This is so, because a question arises as to the relation between rights granted to a national minority in a given country (e.g. rights granted to Kurds in Germany) in comparison to rights of all citizens who do not belong to a "unique" ethnic group. There is a question if the granting of rights to cultural and ethnic minorities creates tension between these groups and the general public within the state. The position expressed by some scholars (M. Waever, S. Theiler) on the necessity of granting ever-wider rights to ethnic, religious or cultural groups, causes tensions both in the sphere of relations between particular groups and between these groups and the general public.

Undoubtedly, the most serious threat to the sense of social security is migration. The problem of migration is here referred to the territory of the European Union. Just after the Second World War, migration was occurring only in France, Germany,

[11] J. Niessen, *International Migration on EU Foreign Policy Agenda*, "European Journal of Migration Law" 1999, Vol. 1, pp. 489–494.

[12] J. Czaputowicz, *Bezpieczeństwo międzynarodowe – współczesne koncepcje*, Warszawa 2012.

[13] The problems of relationships between the methodological layer of security and its legal bases are discussed in more detail by M. Karpiuk in the chapter entitled *Prawne podstawy bezpieczeństwa* ([in:] *Podstawowe kategorie bezpieczeństwa narodowego*, red. A. Żukowski, W.T. Modzelewski, J. Więcławski, Olsztyn 2015, pp. 64–71).

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Italy, Belgium, the Netherlands, Luxembourg and the United Kingdom. On the other hand, one cannot talk about migration in the former satellite countries of the Union of Soviet Socialist Republics. Such phenomena as external migration did not occur to a wide extent in the economic bloc of the Council for Mutual Economic Assistance or the military alliance of the Warsaw Pact[14]. It should be strongly stressed that for almost four decades, i.e. until the beginning of the 21st century, the attitude towards immigrants in Western Europe was very positive. As J. Barcz put it, the Union's values focus on the values of respect for human dignity, freedom, democracy and respect for human rights, including the rights of people belonging to minorities[15]. The attitude was mainly related to the economic element based on the assumption that immigrants provide cheap labour. At the same time, no real and efficient migrant assimilation systems have been created in West European societies for almost four decades of developed migration from Asian and African directions. The terrorist attacks in the United States on 11 September 2001 began a new era both in terms of security and the attitude to minority rights[16]. An additional negative element was the attacks in Madrid and London. In 2005, James Cameron, Angela Merkel and Nicolas Sarkozy announced the failure of the European programme of refugee assimilation and the failure of integration in Europe in terms of liberal policy towards immigrants. Therefore, this should be understood as the failure to apply the same standards to immigrants and indigenous people in the EU, resulting in increased internal tensions. Since 2005, we can talk about the process of securitization of migration. One of the basic documents to regulate the status of refugees in the EU is Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin II). This document replaced the earlier regulation in the form of Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin I). Above all, the Dublin Convention (II) defines the state responsible in the European Union for processing an asylum application. This mechanism is

[14] In Poland, a large migration wave took place in 1949 and was related to Greece. Poland received approx. 14 thousand Macedonians and Greeks. Many of them settled in the region of Silesia, in Zgorzelec and Ustrzyki Dolne. The largest places of Greek settlement included Wrocław, Police and Zgorzelec.

[15] J. Barcz, *Zasadnicze reformy strukturalne ustroju Unii Europejskiej*, [in:] *Traktat z Lizbony. Główne reformy ustrojowe Unii Europejskiej*, red. J. Barcz, Warszawa 2008, pp. 62–64.

[16] S. Islam, *Negative Effects of Ill-Advised Legislation: The Curious Case of the Evolution of Anti-Sharia Law Legislation into Anti-Foreign Law Legislation and the Impact on the CISG*, "Howard Law Journal" 2014, Vol. 57(3), pp. 989–993.

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intended to provide each alien with the access to asylum proceedings. The Convention contains the definition of an alien and an asylum application. The asylum application is tantamount to a request for being granted a refugee status under the Geneva Convention of 1951 and the New York Protocol of 1967. The criteria for determining responsibility for processing an application include family issues, the holding of a visa or residence permit in a Member State, or the question whether the applicant entered the EU legally or illegally. At the same time, procedures for asylum applicants were strengthened much more as compared to the first Dublin Convention. A mechanism of early warning, preparedness and crisis management was introduced in order to combat the root causes of the ineffective operation of national asylum systems. A number of provisions have been introduced for the protection of applicants, such as compulsory hearing, guarantees for minors, two-instance appeal procedure, together with guaranteeing the right of the person concerned to remain in a given territory pending the decision of the Court on the transfer, for the period of the appeal proceedings. The obligation to provide free legal assistance was introduced. There are also restrictions on the duration of the detention. It also introduced, very important for refugee protection, the time limits for the whole procedure. It may not last longer than 9 months.

The legislation of a specific, implementing nature is Council Regulation (EC) No. 2725/2000 of 11 December 2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention, and Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (consolidated version) applicable from 20 July 2015. The legislation introduced a solution, very criticized at the moment, pursuant to which the guarantees for asylum seekers include checking available databases of criminal records and limiting the search only to cases of the most serious crimes, such as homicide and acts of terrorism. The screening of asylum seekers on a random basis is also criticized very much[17]. The Convention has waived the principle of systematic screening of asylum seekers in

[17] E.R. Brouwer, *Eurodac: Its Limitations and Temptations*, "European Journal of Migration and Law" 2002, Vol. 4(2), pp. 232–235.

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terms of threats, giving them an exceptional and special primacy. At the same time, no data obtained from Eurodac can be forwarded to third countries.

The *acquis communautaire* of the Union is complemented with the Geneva Convention Relating to the Status of Refugees of 1951 and the New York Protocol of 1967. Poland is a party to all the above-mentioned conventions. It should be stressed that a very important problem is related to the conceptual grid of the Dublin II Convention and the Geneva Convention. As a solution for interpretative doubts, the joint position of 4 March 1996 harmonized application of the definition of the term "refugee" under Article I of the Geneva Convention[18] was agreed. The granting of a refugee status in the European Union depends on the fulfilment of the criteria set out in the Geneva Convention. The provisions of the joint position relate only to those criteria which are expressed in Article 1 of the Convention and do not relate to other asylum statuses. The application for granting refugee protection should be examined individually, in the light of the circumstances and facts presented therein. Even when the refugee status is applied for by an entire group of refugees, the applications should be processed separately.

Equally relevant to the European legal order, although not having the same legal force as the Conventions or regulations, are the directives addressed to the Member States in terms of establishing uniform standards for receiving refugees across the Union as a whole. The directive on procedures for granting and withdrawing refugee status[19] plays an essential role here. It points to mechanisms that must be put in place in national legal systems to ensure that asylum seekers can apply for the asylum quickly and safely. The directive also points to the non-transparency of the asylum seeker reception procedures and – consequently – the excessive length of proceedings, and appeals to the European Court of Human Rights in Strasbourg. An example of this is the Court's ruling in case *S.D. v. Greece*[20] wherein the Court found a breach of Articles 3 and 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[21] by "degrading treatment" of a Turkish asylum seeker, and his detention by the Greek police, which was contrary to Article 5 of the Convention and EU procedures. The Court decided in a similar manner in another case, namely *Tabesh v. Greece*[22], concerning an asylum-seeking Afghan citizen who had been detained by the Greek police for a period of three months at the turn of 2006 and 2007, which constituted a breach of the EU asylum procedures and the Convention for the Protection of Human

[18] OJ L 281 of 14 October 1997.

[19] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

[20] *S.D. v. Greece*, application No. 53541/01, July 2009.

[21] The Convention was adopted in Rome on 4 November 1950 (ETS No. 005).

[22] *Tabesh v. Greece*, application No. 8256/07, 26 November 2009.

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Rights. It should be noted that Greece, due to very large numbers of immigrants, is unable to cope with the problem by itself, especially in view of the economic crisis and social unrest. As a result, many issues related to abuse of human rights (of asylum seekers/refugees) involve the use of excessive, in the opinion of asylum seekers, coercive and supervisory measures. At the same time, as the Court of Human Rights pointed out[23], the provisions of the Dublin II Convention were breached in these cases[24].

Granting asylum on the territory of the European Union is based on the finding that the person enjoys a refugee status or benefits from subsidiary protection. An instrument for assisting in the proceedings is the Qualification Directive[25]. It lists a number of rights related to protection from refoulement, travel documents, indicates refugee rights related to the right to education, medical care, social welfare and an indication of regulations regarding the protection of children and vulnerable persons. This directive was amended by the provisions of the new Qualification Directive. The latter changed the scope of international protection granted to applicants for refugee status, and extended it, ensured compliance with the rulings of the Court of Human Rights, significantly broadened access to medical care in all European countries, granted virtually unlimited rights to children of the applicants, equally with children of EU citizens.

When writing about the rights related to applying for the refugee status in the EU, one must refer to their very broad nature. The question arises as to the scope of the sense of security of citizens of the European Union in terms of possible threats resulting from the inflow of millions of culturally and ethnically separate refugees, the consequences of immense migration to the European Union, the sense of alienation of citizens in their own countries, the threat to economic security. It should be strongly emphasized that in the light of the development of the refugee protection system, which falls within the scope of international protection of human rights, mostly incorporated into the EU legal system, the possibility of interference in these rights by the Union as a whole is definitely limited, even in cases related to EU security.

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[23] From the point of view of jurisdiction over a case to be considered by the ECHR, there is no requirement for the applicant to come from a country that is a party to the Convention. This requirement is only valid for the country in which that person seeks an asylum.

[24] UNHCR, *Observations on Greece as a country of asylum*, www.refworld.org/pdfid/4b4b-3fc82.pdf [access: 10.06.2019], pp. 8–12 (see note 144); Greek Presidential Decree No. 81/2009 modifying Presidential Decree No. 90/2008 on the transposition into Greek legislation of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Official Gazette A-99, 30 June 2009).

[25] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

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Security of a citizen of the European Union[26], mentioned in the subject-matter of the article, results from Article 17 of the Treaty establishing the European Community[27], in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union[28] (hereinafter referred to as the Charter). In the light of Article 6 of the Charter, everyone has the right to "liberty and security of person". Also Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms points to personal security as one of the fundamental human rights. As A. Wyrozumska aptly put it, the current Article 6 of the Treaty on European Union confirms that fundamental rights, guaranteed in ECHR and rooted in common constitutional traditions of the Member States, form part of the EU law, and that the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000[29]. Unfortunately, none of these documents refer to the pure concept of security in the field of physical security or security as a citizen. In the light of the case-law of the European Court of Human Rights regarding Article 5 of the European Convention for the Protection of Hu-

[26] The consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union deal with EU security issues in a broad sense. The problem of security of an EU citizen is not mentioned in the Treaties even once, while *a contrario*, the issue of refugee protection is governed by the provisions of Article 78 TFEU (ex Article 63 and 64 TEC), as follows: "1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties. 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising: a uniform status of asylum for nationals of third countries, valid throughout the Union; a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection; a common system of temporary protection for displaced persons in the event of a massive inflow; common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; standards concerning the conditions for the reception of applicants for asylum or subsidiary protection; partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection. 3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament".

[27] Traktat ustanawiający Wspólnotę Europejską w wersji skonsolidowanej, [in:] *Dokumenty europejskie*, red. A. Przyborowska-Klimczak, E. Skrzydło-Tefelska, Lublin 2004, p. 109. Currently, Article 17 TEC has been incorporated as Article 20 of the Treaty on the Functioning of the European Union (consolidated version) (OJ EU 2012/C 326/01 of 26 October 2012).

[28] OJ EU 2012/C 326/02 of 26 October 2012.

[29] A. Wyrozumska, *Umocnienie ochrony praw podstawowych*, [in:] *Traktat z Lizbony…*, pp. 177–178.

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man Rights, it is presumed that this concerns physical freedom. As M.A. Nowicki states, pointing to the specific rulings of the Court, the term of "personal security" is only to stress that deprivation of liberty cannot be arbitrary[30]. Therefore, there is no ground under Article 5 to presume existence of separate personal security. This is so because in the light of the content of Article 5, one can only speak about the sphere of protection of individuals against unfair detention, confinement and arrest. The right to personal security is, therefore, vested in individuals who may be subject to restriction of liberty, but not to those who are concerned about their security[31]. Besides, as regards personal security, there is an attribute of personal security protection referred to both in the case law and in the literature on the subject, most often for the people applying for refugee status or suspects and defendants who are citizens of contracting parties to the Convention for the Protection of Human Rights. *A contrario*, the protection is most often provided to those infringing legal norms, not those who behave passively and expect protection from the authorities. Consequently, contrary to what might be expected, there is no individualized, particular protection to be granted to EU citizens under the system of acts of the primary or secondary law. The most prominent example is the ruling of the Court of Human Rights in *Case of Amuur v. France*[32]. Plaintiffs alleging a violation of the Geneva Convention of 1951 relating to the status of refugees arrived at Paris Orly Airport from Damascus on 9 March 1992 and stated that they had left their country of origin (Somalia) for being persecuted by the ruling regime, and the threat posed to their lives. Since their passports were forged, the airport's border guards refused them to enter the area of the airport. They were detained for 20 days in the transit zone of the airport, until the French Interior Minister refused them permission to access as asylum seekers. They were then sent back to Syria, without any chance to file an effective application to the authority having jurisdiction regarding their refugee status. The Court stated that the plaintiffs had been left alone for the whole period and were placed under constant police supervision without legal and welfare assistance. All the time they claimed to be refugees. Moreover, their detention was not subject to a judicial review. The Court found that the applied norms of French law constituted a manifest abuse of power and thereby France breached the Convention, specifically its Article 5. The analysis of other judgements shows that in most cases the Court found a violation of Article 5, especially towards asylum seekers as well as aliens applying for such status. The established case-law of the Court consistently allows for the maximum application of the catalogue of rights protection to applying for the status of a refugee or asylum seeker. Thus, by using current case-law, people who apply for such status have a very good legal

[30] Judgement *Bozano v. France* of 18 December 1986, A 111, § 54, § 60.
[31] M.A. Nowicki, *Wokół Konwencji Europejskiej*, Warszawa 2013, pp. 452–457.
[32] Judgement of 25 June 1996 ("Report" 1996, pp. 23–28).

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instrument to protect their rights in the future in all countries that are parties to the Convention, including Poland. This is also due to the process of democratic legitimization within the European Union at the level of the Member States. The Treaty of Lisbon, which significantly amends previous treaties, strengthens the status of democratic bodies of the Member States both in terms of their activity at the level of the European Union and in their mutual relations[33].

Therefore, one of the basic levels of protection and sense of security for citizens is only the protection provided by the constitutional systems of particular Member States, not the European system as a whole, which by definition protects the applicants for the refugee status, without considering possible threats to the citizens of the European Union. In particular, the sense of personal security can only be currently ensured by national legal systems[34]. As an example, in the case of the Schengen system we do not deal with the systematic verification of applicants for refugee status as it would be inconsistent with the Dublin II Convention.

Also the assumptions of the Prüm Treaty were supposed to ensure security of an individual. The agreement was signed in 2005 between Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria. The Treaty was concluded outside the legal order of the Union, and Germany initiated the process of implementing the provisions of the Treaty of Prüm into the EU legal system. In the light of the assumptions, the ideas contained in the Treaty aroused much controversy at the very beginning[35]. Despite the opposition voiced in June 2007, the EU Council of Home Affairs Ministers adopted a Council decision on strengthening cross-border cooperation, in particular for combating terrorism and cross-border crime. The Council of the Union adopted on 23 June 2008 the decision on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime[36]. In addition to access to databases of the other country through IT and ICT technologies, the exchange of information using DNA tags has been introduced. A definition of DNA profile was also introduced, based on the American model, according to which, "»DNA profile« means a letter or number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, i.e. the particular molecular structure at the various

[33] C. Mik, *Umocnienie legitymacji demokratycznej Unii Europejskiej*, [in:] *Traktat z Lizbony…*, pp. 108–109.

[34] It the case of Poland, a particular role with this regard is played by special services, especially through their operational and surveillance activities. For more details, see J. Kostrubiec, *Formy działania służb specjalnych*, [in:] M. Bożek, M. Czuryk, M. Karpiuk, J. Kostrubiec, *Służby specjalne w strukturze władz publicznych – zagadnienia prawnoustrojowe*, Warszawa 2014, pp. 105–133.

[35] W. Czapliński, *Konwencja z Prüm – albo kilka uwag o granicy między prawami człowieka a bezpieczeństwem państwa*, [in:] *Prawo w XXI wieku – Księga pamiątkowa 50-lecia Instytutu Nauk Prawnych Polskiej Akademii Nauk*, red. W. Czapliński, Warszawa 2006, p. 190.

[36] OJ EU L 210/12 of 6 August 2008.

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DNA locations (loci)"[37]. At the same time, a very expansive procedure of "automated search" was introduced, involving continuous, 24-hour, access to databases of the Member States. The solution introduces an opportunity of unlimited use of other countries' databases in the event of a security threat[38].

Unfortunately, however, as previously mentioned, this instrument cannot be used on a voluntary basis, by way of a free choice. This is due to the adoption of the international refugee protection system[39].

To sum up, it should be noted that in the light of EU and international regulations, refugees have at their disposal a very wide range of rights which guarantee their legal, economic, cultural and religious security. An additional reinforcement of their status in the EU is the established case law of the European Court of Human Rights, which – as evidenced by statistical figures – in most cases found violation of fundamental rights in respect of refugees by parties to the Convention. The rights granted to refugees do not have their equivalent on part of the level of protection of the citizens of the European Union. In general, there is no regulation relating to individual security of EU citizens and providing such security at the level of EU legislation. Such guarantees are to be sought in the national legislation of the Member States. There is a noticeable imbalance between the refugee rights system and the protection system in the form of security of person, which is the fundamental right vested in citizens of the Union. As a consequence, the absence of uniform, coherent legislation in this field will cause unrest and social conflicts in the future.

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Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

[37] *Ibidem*.

[38] J. Barcz, *Konwencja z Prüm a Unia Europejska – problem metody i relacji*, Warszawa 2007.

[39] This thesis is continuously verified by the special services of the Republic of Poland in the context of their statutory prerogatives. On the one hand, the activities of special services are based on their statutory powers and on the other, are restricted by international commitments of the Republic of Poland. For more details, see M. Karpiuk, *Zakres działania służb specjalnych*, [in:] M. Bożek, M. Czuryk, M. Karpiuk, J. Kostrubiec, *op. cit.*, pp. 62–104.

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STRESZCZENIE

W opracowaniu analizie został poddany status obywatela Unii Europejskiej z punktu widzenia jego praw podmiotowych w kontekście praw uchodźców wynikających z regulacji międzynarodowych. Zasadniczym celem było określenie granicy pomiędzy prawami obywatela UE a prawami uchodźców. Opisano także wpływ Arabskiej Wiosny Ludów na problem migracji oraz związane z tym zagrożenia bezpieczeństwa wewnętrznego państw członkowskich UE. Zasygnalizowano problemy, które pojawiają się w związku z destabilizacją sytuacji na arenie międzynarodowej w rejonie Afryki Północnej i Środkowego Wschodu, rozwojem skrajnych ruchów islamistycznych oraz efektywnym zetknięciem się warstwy jurydycznej norm ochrony praw człowieka i bezpieczeństwa międzynarodowego.

Słowa kluczowe: bezpieczeństwo obywateli UE; prawa uchodźców; kryzys migracyjny w UE; procedury dotyczące uchodźców; prawo bezpieczeństwa a prawa człowieka

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