Identity checks have so far received little attention from legal scholarship. This is also an issue that has only relatively recently been dealt with in more detail relatively recently in the case law of higher courts. At first glance, one could argue that this is not surprising, since it is a relatively simple measure covered by a legal framework that is not elaborate and complex and does not appear to interfere significantly with the rights and
freedoms of individuals. However, such a view of identity checks would be an oversimplification for at least two reasons.

First, it is wrong to assume that an identity check cannot lead to a significant interference with the rights and freedoms of individuals. While it can be agreed that the mere short-term entry into the sphere of freedom of movement, as well as the privacy of an individual, does not, as a rule, give rise to far-reaching consequences, it is worth noting that legitimacy may, however, indirectly lead to such consequences. Two points seem particularly important in this context. First, there is a high potential for discriminatory identity checks, especially in relation to various minorities (e.g. ethnic minorities). This problem has been recognised in many countries. Furthermore, the abuse of identity checks can result in a person being prevented from exercising his or her rights and freedoms, apart from freedom of movement. Examples include freedom of assembly (especially spontaneous assembly) and freedom of expression, which individuals may not be able to exercise due to slow and abusive identity checks. Second, the brevity of the normative regime does not necessarily mean that a particular legal measure is not controversial. Consequently, the seemingly unobtrusive and “technical” measure of an identity check must nevertheless be addressed and the extent to which the legal norms in force in Poland comply with supra-legal standards and are optimal from the point of view of ensuring a balance between the protection of individuals’ rights and the public interest must be determined. Of course, it must be realised that the scale of the problems associated with irregularities in identity checks is not comparable to those associated with such forms of deprivation of liberty as arrest or pre-trial detention. However, this does not change the fact that identity checks should also be scientifically reconsidered.

Therefore, this paper will first discuss the supra-statutory standard for identity checks. In this context, besides the reference to the Constitution of the Republic of Poland, the wording of the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights is essential. Subsequently, the key points of the statutory regulation of identity

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10 “The ECHR”. 
Identity checks are analysed, namely: the grounds for carrying out identity checks, the competent bodies, the scope of their competence and the rights of those affected by identity checks. The practice of conducting identity checks is also discussed, including the important issue of the use of body-worn cameras in an identity check. The distinction between an identity check, an arrest and other forms of temporary deprivation of liberty or freedom of movement was also addressed. The paper concludes with proposals of the optimal design of the current legal arrangements.

Identity checks and the constitutional standard

As regards the constitutional norms relevant to identity checks, reference must be made to Article 41 of the Constitution which, in the first sentence of paragraph 1, states that the personal inviolability and personal freedom of every person are guaranteed. “Personal inviolability” means the freedom of the individual “from arbitrary interference by public authorities with their physical, mental and spiritual integrity”. Personal inviolability is a necessary and particularly important prerequisite for the realisation of the personal liberty of the individual in a democratic state ruled by law, which respects the principle of liberty. On the other hand, personal liberty is understood as “the ability of the individual to make decisions according to their own will and to choose freely his or her conduct in public and private life without being restricted by others. The freedom of the individual is considered — in the light of the applicable constitutional standards — to be a fundamental value of a democratic society, inherent, indisputable and inalienable in the individual, and the source of the development of their personality, personal well-being and social progress”. It can be concluded from the above that an identity check constitutes an interference with personal liberty as thus outlined. However, it must be clarified whether an identity check constitutes a deprivation of liberty or merely a restriction of liberty. Despite appearances, the answer to this question is not simple. Scholars agree that identity checks are a form of deprivation of liberty. However, it should be noted that, in the case of identity checks, the interference concerns the area of freedom of movement. The other aspects of personal liberty, which consist of, as the Polish Constitutional Court puts it, “making free choices about conduct in public and private life”, do not need to be restricted in this case. This situation is therefore different from arrest, for example, which

11 Judgement of the Constitutional Court of 5 March 2013 (U 2/11, OTK-A 2013, no. 3, item 24).
12 Judgment of the Constitutional Court of 11 October 2011 (K 16/10, OTK-A 2011, no. 8, item 80).
14 Judgment of the Constitutional Court of 11 October 2011 (K 16/10, OTK-A 2011, no. 8, item 80).
generally involves not only a restriction of freedom of movement. From this perspective of the extent of interference with personal liberty, identity checks are more comparable to the examples of restrictions on personal liberty mentioned by legal scholars (e.g. the use of penal or preventive measures that prohibit or prescribe certain behaviour) than to measures such as arrest or pre-trial detention. Of course, the caveat applies that the above statement refers to identity checks carried out correctly and expeditiously, and not to those carried out incorrectly or even maliciously, as may be the case in practice. Another important factor of identity checks is, quite naturally, the fundamentally short duration of the procedure. However, it should be made clear that the criterion of duration cannot be decisive in classifying a particular measure as a restriction or deprivation of liberty. Indeed, it should be noted that an arrest that clearly constitutes a deprivation of liberty may also be short in a given situation. However, this does not change the fact that duration is an important factor. In summary, an identity check should be considered as an interference with a person’s personal liberty, which constitutes a restriction of personal liberty within the meaning of Article 41 of the Constitution.

The above conclusion is not merely theoretical. Indeed, its adoption means that the second sentence of Article 41(1) of the Constitution, which states that deprivation or restriction of liberty may only be carried out in accordance with principles and procedures established by law, is applicable to this institution. As the Constitutional Court states, “the general requirement of exclusive and complete statutory regulation of the restriction of constitutional rights and freedoms, including personal liberty, derives from Article 31(3) of the Constitution, while the second sentence of Article 41(1) of the Constitution contains a specific requirement, namely that the statutory regulation for the restriction of personal liberty must contain principles and procedures for the restriction of that liberty. The latter requirement, which derives from the second sentence of Article 41(1) of the Constitution, supplements (...) in relation to the restriction of personal liberty, the constitutional requirements for the restriction of personal liberty deriving from Article 31(3) and the first sentence of Article 41(1) of the Constitution.” Furthermore, the Constitutional Court concludes that “the principles of restriction of personal liberty regulated by law, as referred to in the second sentence of Article 41(1) of the Constitution,”

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15 This view coincides with the position of Wiliński and Karlik, who point out that “deprivation of liberty is therefore the most far-reaching form of interference with the liberty of an individual. As a result, a person deprived of liberty is isolated from the rest of society, which has the additional effect of temporarily limiting the possibility to exercise and enjoy other rights laid down in the Constitution of the Republic of Poland. (...) A restriction of liberty, in turn, affects the freedom of the individual to a much lesser extent as it means that the person concerned must be present in certain places at precisely specified times” (Wiliński, Karlik, Komentarz..., p. 1000). However, these authors include identity checks as a manifestation of deprivation of liberty (cf. the previous footnote), which is arguably an unfounded claim given the definitions discussed above.

include all the conditions that directly determine the restriction of personal liberty, in particular the determination of the body that decides on the restriction of personal liberty, the determination of the persons in relation to whom the decision on the restriction of personal liberty may be taken and the determination of the conditions related to these persons, e.g. their legal status, their conduct, the situation in which they find themselves. On the other hand, the procedure for restricting personal liberty referred to in the second sentence of Article 41(1) of the Constitution is to be understood in the light of the constitutional provisions as the statutory rules of conduct (procedure) for the bodies empowered under the law to decide on the restriction of personal liberty. (...) The second sentence of Article 41(1) of the Constitution also provides that the statutory provisions governing the restriction of personal liberty must incorporate all the grounds determining the principles and procedure for the restriction of personal liberty. (...) The necessity of determining these terms in a statute means that a statutory regulation should include all direct, substantive legal grounds of the restriction of personal liberty. At the same time, the requirement of determining a procedure for restrictions of personal liberty in a given statutory regulation means that statutory restrictions of personal liberty should also include all legal grounds that directly determine the procedure of restricting one’s personal liberty”

Reading the wording of Article 41 of the Constitution, one concludes that paragraphs 2 to 5, which refer only to deprivation of liberty (paragraphs 2, 4 and 5) or arrest as a form of deprivation of liberty (paragraph 3), do not apply to identity checks or to other forms of restriction of personal liberty. However, the provisions in Article 41 (4) and (5) reinforce in particular the general constitutional provisions on the protection of the dignity of the individual and the prohibition of inhuman and degrading treatment, as well as the provisions on the liability of the State Treasury for unlawful acts and omissions. Thus, the fact that they do not apply to identity checks does not mean that the State Treasury is exempt from liability for unlawful acts and omissions in connection with identity checks and that the person whose identity is checked may be treated inhumanely.

Thus, assuming that identity checks are a restriction rather than a deprivation of liberty, this means that the above-mentioned special rules under Article 41 (2)–(5) of the Constitution do not apply to identity checks. However, this does not change the fact that the Constitution sets general standards for both the legal framework and the manner in which identity checks of individuals are carried out. First, in accordance with the

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17 Ibid.
second sentence of Article 41 (1) of the Constitution, the legal regulation of an identity check should include both principles (rules) and procedure. The first term is to be understood as referring to the grounds for identity checks, the designation of a body authorised to carry out identity checks and the persons whose identity may be checked. A law should also address the core issues related to the identity check procedure. Notwithstanding the above, both the legal framework and the practice of identity checks on persons are subject to the general regime of the proportionality test under Article 31 (3) of the Constitution. Restrictions on personal liberty may therefore only be made if they are necessary in a democratic state for security or public order, or for the protection of the environment, public health and morals, or the freedoms and rights of others. These restrictions may not violate the essence of the freedoms and rights in question.

### Identity checks and the international standard

From a European perspective, the ECHR is undoubtedly of paramount importance for the protection of the fundamental rights of the individual. This overview of the standards for identity checks under international law will therefore be limited to the European context. It will, of course, take into account that the Convention standards have largely been created by the ECtHR as the body charged with interpreting the Convention provisions. Such an approach is sufficient, especially since the powers of the European Union mean that its acquis in the area of individual rights is in principle not applicable to identity checks.

So far, surprisingly, the Strasbourg bodies have only addressed the issue of identity checks on a handful of occasions. First and foremost, attention should be drawn to the inadmissibility decision of the Human Rights Commission in *Reyntjens v. Belgium*\(^\text{19}\). The Commission investigated the applicant’s removal to a police station and his detention for two and a half hours after he (unlawfully) refused to show his identity document during a routine roadside check. In considering the applicant’s complaint, the Commission formulated three main conclusions. First, it found that the obligation to produce an identity document to a police officer did not constitute an interference with the right to freedom of movement guaranteed by Article 2 of Protocol 4 to the ECHR. Second, the Commission found that the obligation to present an identity document in the context of a routine roadside check did not constitute an interference with the right to privacy under Article 8 ECHR, due to the scope of the data in the identity document. Third, where national law imposes an obligation to provide identification data to police officers, non-compliance with this obligation may justify the arrest of a person and taking him or her

to a police station. According to the Commission, this type of deprivation of liberty may be applied under Article 5 (1) (b) ECHR.

In its subsequent rulings, the ECtHR confirmed the third of the above conclusions. In Reyntjens, the ECtHR examined a case in which the applicants, together with other persons, were locked in a “kettle” by the police for one hour and two hours in order to verify their identity in connection with an alleged criminal offence. The ECtHR considered that, although it did not have to decide whether this situation constituted an interference with the right to personal liberty guaranteed by Article 5 ECHR, even assuming that it did, the interference would be justified on the basis of Article 5(1)(b) ECHR, i.e. by the need to enforce an obligation imposed by law (the obligation to produce an identity document) 20. In this context, it is also worth noting that in another case the ECtHR accepted that the detention of a large number of people in a police cordon for about seven hours during a demonstration in London to prevent public order offences in connection with the identification of persons among the participants who might commit such offences did not constitute a deprivation of liberty within the meaning of Article 5(1) ECHR 21.

Returning to the issue of identity checks, it should be noted that in several other of its cases, the ECtHR has not explicitly decided which Convention right of an individual is interfered with in an identity check. In Vig v. Hungary, a case that concerned a person who was subjected to an identity check and a search, the ECtHR examined these measures for their compatibility with Article 8 ECHR (and found a violation of this provision) and considered it unnecessary to examine whether there was a violation of Article 5(1) ECHR in this case 22. Vig is relevant to defining the limits of the legality of identity checks, but from a different perspective. This is because in the Vig judgment, the ECtHR found that the introduction of the possibility to conduct enhanced identity checks and searches of individuals throughout the country in Hungary in the context of preventing illegal immigration violated the standard for defining limitations on the right to privacy under the law, as set out in Article 8(2) ECHR. In the absence of clearly defined conditions for identity checks and searches, the provisions in question did not allow for an effective review of the procedures carried out 23.

In the context of Vig, it is worth mentioning another ECtHR case, Colon v. the Netherlands 24. Although Colon concerned so-called preventive searches and not identity checks, the former were based on similar assumptions as the identity checks and searches in Hungary. Due to the recorded increase in violent crime in Amsterdam, the police were given

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21 ECtHR, Austin and Others v. the United Kingdom, nos. 39692/09, 40713/09 and 41008/09, judgment of 15 March 2012, §§ 61–69.
23 Ibid., §§ 51–63.
24 ECtHR, Colon v. the Netherlands, no. 49458/06, decision of 15 May 2012.
special powers to search people for weapons in certain areas of the city. According to the ECtHR, the measure introduced interfered with the right to privacy of an individual. The interesting part of this decision, however, is the ECtHR’s ruling on the applicant’s claim that Article 2 of Protocol No. 4 to the ECHR, i.e. freedom of movement, was violated. The ECtHR found that “while there was a chance that the applicant might be put to the inconvenience of being ordered to undergo a search by the police within the security risk area, he was in no way prevented from entering that area, moving within it and leaving it again. His liberty of movement was therefore not affected”25.

The ECtHR also examined racial discrimination as a motive for the police to carry out identity checks. Examining such an allegation in the case of Muhammad v. Spain, it found that the “identity check necessarily affected the applicant’s private life, and would have been sufficient to affect his psychological integrity and ethnic identity, for the purposes of Article 8 of the Convention”26. Therefore, Article 8 ECHR (and Article 14 ECHR, which prohibits discrimination) were considered applicable to the case. However, it should be noted that Article 8 ECHR was applied in Muhammad due to the particular circumstances of the case, which were related to the ethnicity of the applicant. This finding is confirmed by the ECtHR’s decision in Basu v. Germany, where it was held that “not every identity check of a person belonging to an ethnic minority attains the necessary threshold of severity so as to fall within the ambit of the right to respect for that person’s private life. That threshold is only attained if the person concerned has an arguable claim that he or she may have been targeted on account of specific physical or ethnic characteristics. Such an arguable claim may notably exist where the person concerned submitted that he or she (or persons having the same characteristics) had been the only person(s) subjected to a check and where no other grounds for the check were apparent or where any explanations of the officers carrying out the check disclose specific physical or ethnic motives for the check. The Court further observes in this regard that the public nature of the check may have an effect on a person’s reputation (..) and self-respect”27.

A review of the ECtHR’s jurisprudence on identity checks leads to the conclusion that the Court is rather reluctant to establish universal standards for the conduct of such procedures. The sparse case law to date even suggests that the ECtHR does not see an interference with Convention rights in “ordinary” identity checks that are not accompanied by other special circumstances (such as suspicion of discriminatory criteria or a search of the person). While such a conclusion raises no questions from the perspective of Article 5 ECHR, some concerns may arise in the context of Article 2 of Protocol 4 to the ECHR, which guarantees freedom of movement. Identity checks undoubtedly restrict a person’s ability to move away from the place where the procedure is being conducted but the ECtHR

25 Ibid., § 100.
26 ECtHR, Muhammad v. Spain, no. 34085/17, judgment of 18 October 2022, § 51.
27 ECtHR, Basu v. Germany, no. 215/19, judgment of 18 October 2022, § 25.
did not consider this sufficient to constitute an interference with freedom of movement. The ECtHR has also taken this position in relation to security checks at airports\textsuperscript{28}. In contrast, the ECtHR recognises an interference with Convention rights when an identity check is accompanied by a search (interference with the right to privacy) or when an identity check is caused by discriminatory factors such as skin colour or ethnicity (interference with the right to privacy and a possible violation of the prohibition of discrimination). It can also be deduced from \emph{Vig v. Hungary} that all norms permitting identity checks and searches of an individual must meet the requirements of Article 8(2) ECHR, which states that interference with the rights of individuals must be provided for by law. The latter, in turn, according to settled case law of the ECtHR, means not only that there must be a specific legal act (settled case law) conferring the power to interfere with the right to privacy, but also that the law must meet certain requirements as to its quality, relating to the sufficient precision of its formulation, the accessibility of the normative act to individuals and the foreseeability of their legal position. Moreover, there must be legal remedies to prevent arbitrary acts by the state authorities\textsuperscript{29}. The final conclusion that can be drawn from the review of the Strasbourg jurisprudence is that the imposition of a general duty of identification is not contrary to the ECHR and that non-compliance with this duty may lead to a deprivation of liberty justified under Article 5(1)(b) ECHR.

\textbf{Normative grounds for identity checks in the Polish legal system}

Carrying out an identity check of a person (Polish: \emph{legitymowanie}) is defined in the literature as a means of establishing or confirming the identity and other particulars of a person on the basis of documents in that person’s possession, by checking whether the particulars contained in those documents correspond to the person’s actual identity\textsuperscript{30}. There is no agreement among authors on the nature of the identity check. Some consider it an administrative and organisational measure (\emph{czynność administracyjno-porząd kowa})\textsuperscript{31}, while others point out that it can also be an operational and intelligence-gathering measure (\emph{czynność operacyjno-rozpoznawcza}) or an investigative measure (\emph{czynność dochodzeniowo-śledcza})\textsuperscript{32}. The latter approach deserves acceptance, as it is difficult to clearly distinguish between these three types of measures listed in Article 14 (1) of the Police Act\textsuperscript{33}. These categories overlap with each other and the legislator itself does not assign identity checks to any of them.

\textsuperscript{28} Cf. ECtHR, \emph{Phull v. France}, no. 35753/03, decision of 11 January 2005.
\textsuperscript{29} ECtHR, \emph{Vig v. Hungary}, § 51.
\textsuperscript{30} Szawelski, Thiel, \emph{Legitymowanie...}, p. 5.
\textsuperscript{32} Szawelski, Thiel, \emph{Legitymowanie...}, p. 7.
\textsuperscript{33} Police Act of 6 April 1990 (\emph{Ustawa z 6 kwietnia 1990 r. o Policji}) (consolidated text in the Journal of Laws of 2023, item 171, the “Police Act”).
The identity check of a person is listed in Article 15 (1) of the Police Act as the first of many measures that the police are empowered to take. The legislator distinguishes this measure from the subsequent police powers listed in this article, namely detaining persons for the purpose of criminal proceedings (Article 15 (1) (2) of the Police Act), detaining persons who have been deprived of their liberty and escaped (Article 15 (1) (2a) of the Police Act) and detaining persons posing an imminent danger to life, health or property (Article 15 (1) (3) of the Police Act). While the three measures mentioned are obvious forms of deprivation of liberty, an identity check of a person is not classified in a similar way. This is because scholarship indicates that identity checks do not constitute an “actual deprivation of liberty” (rzeczywiste pozbawienie wolności), but are considered a “temporary deprivation of freedom” (krótkotrwałe pozbawienie swobody)\textsuperscript{34} or “restriction of freedom of action” (ograniczenie swobody funkcjonowania)\textsuperscript{35}. The purpose of an identity check is in fact different and consists only in establishing the identity of a person, but not in depriving them of liberty\textsuperscript{36}. It further follows from the above that the “restriction of freedom” during an identity check cannot be prolonged and should always be determined by the extent of the steps necessary to actually establish a person’s identity\textsuperscript{37}.

The Police Act refers to other measures that are similar to identity checks or even contain an identity check as an integral part. This are the personal check (Article 15 (1) (5) of the Police Act) and the preventive inspection (Article 15 (1) (9) of the Police Act). Personal check (kontrola osobista), which has much in common with the search (przeszukanie)\textsuperscript{38}, explicitly provides that a police officer conducting a personal check must verify the identity of the subject of the check and of other persons if they are involved in the procedure (Article 15d (4) (3) of the Police Act). A preventive inspection can be carried out in a similar way, as the law sometimes stipulates that the measure is to be treated as a personal check making a blanket reference to the wording of Article 15d of the Police Act.

Identity checks, despite the widespread assumption that they only lead to a restriction of the individual’s freedom of action, can nevertheless lead to a deprivation of liberty in certain cases. This is because Article 65 § 2 of the Code of Minor Offences (the “CMO”)\textsuperscript{39} stipulates that a person who fails to provide information or documentation concerning their identity

\textsuperscript{34} Judgment of the Court of Appeal in Katowice of 5 July 2012 (II AKa 242/12, LEX no. 1220215).
\textsuperscript{35} Judgment of the Court of Appeal in Katowice of 6 June 2012(II AKa 134/12, LEX no. 1220204).
\textsuperscript{36} J. Karaźniewicz, \textit{Komentarz do art. 15} in: Chałupińska-Jentkiewicz, Kurek (eds.), \textit{Ustawa o Policji...}, assertion 2.
\textsuperscript{37} B. Opaliński, \textit{Komentarz do art. 15} in: Opaliński, Rogalski, Szustakiewicz (eds.), \textit{Ustawa o Policji...}.
\textsuperscript{38} For a fuller discussion on personal inspection, see J. Karaźniewicz, “Kontrola osobista po nowelizacji ustawy o Policji. Czy zmiany wynikające z wyroku TK usunęły czy pogłębiły wątpliwości co do tej instytucji?”, \textit{Państwo i Prawo} 1 (2022), pp. 129–143.
\textsuperscript{39} Act of 20 May 1971 — Code of Minor Offences (Ustawa z 20 maja 1971 r. — Kodeks wykroczeń) (consolidated text in the Journal of Laws of 2022, item 2151, the “CMO”).
or that of another person, or concerning their nationality, occupation, place of work or place of residence to a competent state body or to an institution authorised by law to carry out identity checks, is liable to the penalty of restriction of liberty or a fine. At the same time, the Minor Offences Procedure Code\textsuperscript{40} ("MOPC") allows the arrest of a person caught in the act of committing a minor offence or immediately thereafter if their identity cannot be established (Article 45 § 1 (2) MPOC). Consequently, at least in theory, any refusal to provide proof of identity when asked by the police can lead to arrest. As in all other situations, interference with the rights and freedoms of individuals may of course only be made within the limits of the principle of proportionality (Article 31(3) of the Constitution). The police are therefore never obliged to make an arrest – except in the specific case of domestic violence (Article 244 § 1b of the Code of Criminal Procedure, the "CCP"\textsuperscript{41}) – and must weigh the competing values on a case-by-case basis, especially as the act in question is not a criminal offence but merely a minor (administrative) offence. This means that non-compliance with a request for proof of identity should be assessed on a case-by-case basis and the implementation of a measure as far-reaching in its impact on rights and freedoms as an arrest should be the last resort.

The Police Act stipulates that the identity check of a person, like any other official procedure, must be carried out by the police with respect for human dignity and human rights (Article 14 (3) of the Police Act). Thus, the officer “must strike a balance between the avoidance of a breach of dignity (...) and the need to ensure his or her own safety and the effectiveness of the performance of the procedure”\textsuperscript{42}. This does not mean that all restrictions on rights and freedoms are prohibited, but as the case law aptly points out, police officers who are called upon to uphold the law and protect citizens from unlawful violations of the law can and should be expected to observe high standards of respect for human rights and human dignity\textsuperscript{43}.

The aforementioned Article 65 § 2 CMO identifies two groups of bodies authorised to carry out identity check and defines them as “state bodies” and “institutions authorised by law to carry out identity checks”\textsuperscript{44}. The first group undoubtedly includes the Police (national police force), the

\begin{thebibliography}{9}
\bibitem{1} Act of 24 August 2001 — Minor Offences Procedure Codes (Ustawa z 24 sierpnia 2001 r. — Kodeks postępowania w sprawach o wykroczenia) (consolidated text Journal of Laws of 2022, item 1124, the “MOPC”).
\bibitem{3} Judgment of the Court of Appeal in Lublin of 11 February 2006, (III SA/Lu 1108/15, Legalis 1434512).
\bibitem{4} Judgment of the Court of Appeal in Białystok of 26 August 2016 (II Ca 592/16, Legalis 1979642).
\bibitem{5} See also the discussion on the concept of a “state body” in the context of identity checks in J. Wojciechowski, “Komentarz do art. 65” in: J. Lachowski (ed.), Kodeks wykroczeń. Komentarz, WKP 2021, LEX online, assertion 7.
\end{thebibliography}
Military Police, the Prison Service\textsuperscript{45}, the Border Guard\textsuperscript{46}, the Internal Security Agency\textsuperscript{47} and the Foreign Intelligence Agency\textsuperscript{48}, as well as the Parliamentary Guard\textsuperscript{49} and the State Protection Service\textsuperscript{50}. On the other hand, the group of institutions authorised by law to carry out identity checks is even broader and includes the State Hunting Guard\textsuperscript{51}, the State Fishing Guard\textsuperscript{52}, the Railway Guard\textsuperscript{53}, the Landscape Park Service\textsuperscript{54}, as well as institutions carrying out customs and tax controls\textsuperscript{55}, and even the municipal police\textsuperscript{56}, inspectors from the Social Insurance Institution\textsuperscript{57} and inspectors from the Trade Inspection\textsuperscript{58}. The circle of bodies authorised to carry out identity checks is therefore very large.

Neither the Police Act nor other legal acts granting other authorities the right to carry out identity checks specify the grounds for doing so. Instead, only the purpose of an identity check, namely the “establishment

\begin{itemize}
\item \textsuperscript{45} Article 17 (1) (1) of the Act of 24 August 2001 on the Military Police and Military Law Enforcement Bodies (Ustawa z 24 sierpnia 2001 r. o Żandarmerii Wojskowej i wojskowych organach porządkowych) (consolidated text in the Journal of Laws of 2021, item 1214).
\item \textsuperscript{46} Article 18 (1) (1), (2) and (2a) of the Act of 9 April 2010 on the Prison Service (Ustawa z 9 kwietnia 2010 r. o Służbie Więziennej) (consolidated text in the Journal of Laws of 2022, item 2470).
\item \textsuperscript{47} Article 11 (1) (4) of the Act of 12 October 1990 on the Border Guard (Ustawa z 12 października 1990 r. o Straży Granicznej) (consolidated text in the Journal of Laws of 2022, item 1061).
\item \textsuperscript{48} Article 23 (1) (2) of the Act of 24 May 2002 on the Internal Security Agency and the Foreign Intelligence Agency (Ustawa z 24 maja 2002 r. o Agencji Bezpieczeństwa Wewnętrznego oraz Agencji Wywiadu) (consolidated text in the Journal of Laws of 2022, item 557).
\item \textsuperscript{49} Article 12 (1) (2) of the Act of 26 January 2018 on the Parliamentary Guard (Ustawa z 26 stycznia 2018 r. o Straży Marszałkowskiej) (consolidated text in the Journal of Laws of 2022, item 1727).
\item \textsuperscript{50} Article 21 (2) of the Act of 8 December 2017 on the State Protection Service (Ustawa z 8 grudnia 2017 r. o Służbie Ochrony Państwowej) (consolidated text in the Journal of Laws of 2023, item 66).
\item \textsuperscript{51} Article 39 (2) (1) of the Act of 13 October 1995 — Hunting Law (Ustawa z 13 października 1995 r. — Prawo łowieckie) (consolidated text in the Journal of Laws of 2022, item 1173).
\item \textsuperscript{52} Article 23 (4) (a) of the Act of 18 April 1985 on inland fishing (Ustawa z 18 kwietnia 1985 r. o rybactwie śródlądowym) (consolidated text in the Journal of Laws of 2022, item 883).
\item \textsuperscript{53} Article 60 (2) (1) and (1a) of the Act of 28 March 2003 on rail transport (Ustawa z 28 marca 2003 r. o transporcie kolejowym) (consolidated text in the Journal of Laws of 2021, item 984).
\item \textsuperscript{54} Article 108 (5) (1) of the Act of 16 April 2004 on nature protection (Ustawa z 16 kwietnia 2004 r. o ochronie przyrody) (consolidated text in the Journal of Laws of 2022, item 916).
\item \textsuperscript{55} Article 64 (1) (4) of the Act of 16 November 2016 on the National Revenue Administration (Ustawa z 16 listopada 2016 r. o Krajowej Administracji Skarbowej) (consolidated text in the Journal of Laws of 2022, item 813).
\item \textsuperscript{56} Article 12 (1) (2) of the Act of 29 August 1997 on municipal police forces (Ustawa z 29 sierpnia 1997 r. o strażach gminnych) (consolidated text in the Journal of Laws of 2021, item 1763).
\item \textsuperscript{57} Article 87 (1) (4) of the Act of 13 October 1998 on the social insurance system (Ustawa z 13 października 1998 r. o systemie ubezpieczeń społecznych) (consolidated text in the Journal of Laws of 2022, item 1009).
\item \textsuperscript{58} Article 16 (1) (4) of the Act of 15 December 2000 on Trade Inspection (Ustawa z 15 grudnia 2000 r. o inspekcji handlowej) (consolidated text in the Journal of Laws of 2020, item 1706).
\end{itemize}
of identity”, is stated rather enigmatically\textsuperscript{59}. Such a broad authorisation to carry out a procedure which, as said, is on the borderline of deprivation of liberty, should be restricted. In this context, as stated in the literature, if the person concerned (and their identity) is known to the police officer, the officer may not subject them to an identity check – after all, the purpose of the procedure is to identify the person in question\textsuperscript{60}. On the other hand, case law increasingly emphasises that in the case of an obvious lack of grounds for identification, which is interpreted as an obvious abuse of an officer’s powers, a citizen may even refuse to produce documents without this having any legal consequences\textsuperscript{61}. It is argued that “the mere fact that a minor offence under Article 65 CMO has been committed does not mean that a citizen is obliged in all circumstances to provide his or her data on pain of liability under that provision”\textsuperscript{62}. However, the above judicial reasoning still does not seem to be implemented in the practice of identity checks. For example, the training materials of the Police School in Słupsk state that identity checks can also be carried out on persons who appear unruly at the sight of a police officer or are found in remote locations\textsuperscript{63}.

The detailed rules for carrying out identity checks are laid down in the Council of Ministers Regulation of 4 February 2020 on the procedure for the exercise of certain powers of police officers\textsuperscript{64}. It should be noted that this is a lower level legal instrument which must comply with the law on the basis of which it was issued (Article 15 (8) of the Police Act). The Regulation of 4 February states that a police officer who carries out measures in connection with an identity check must state their rank, first name

\textsuperscript{59} As provided by, inter alia, Article 15 (1) (1) of the Police Act and Article 12 (1) (2) of the above-mentioned Act on the Parliamentary Guard. It should be noted that the powers to conduct identity checks conferred on officers of the Prison Service are somewhat different and depend on the type of institutions in which they work (see Article 18 (1) (1), (2) and (2a) and Article 18c (1) (1) and (2) of the above-mentioned Act on the Prison Service). Interestingly, certain laws provide additional details of the grounds for identity checks, e.g. in the already mentioned Article 12 (1) (2) of the Act on municipal police forces directly states that identity checks of persons can only take place “in justified cases”.

\textsuperscript{60} Karaźniewicz, \textit{Komentarz...,} assertion 2. In this context, the wording of Article 14 (4) of the Act on the Parliamentary Guard is surprising, in which the legislator directly states that “an officer of the Parliamentary Guard may waive the identity check of a person known to him”. Since identity checks are designed to establish the identity of a person (as can be seen from the wording of Article 12 (1) of the Act on the Parliamentary Guard), it should be assumed that there is no basis for the identity check if the person is already known. The confirmation of this obvious rule in a separate provision may indicate the willingness of the legislator to oppose the practice of law enforcement agencies in this regard. A similar provision was laid down in § 6 of the Council of Ministers Regulation of 4 February 2020 on the procedure for the exercise of certain powers of police officers (Journal of Laws of 2020, item 192).

\textsuperscript{61} Judgments of the Supreme Court of 28 October 2011 (III KK 291/11, LEX No. 1101673), 25 March 2021 (II KK 40/21, OSNK 2021/5/21), and 31 March 2021 (II KK 422/20, OSP 2021, no. 12, item 102).

\textsuperscript{62} Judgment of the Supreme Court of 31 March 2021 (II KK 422/20, TSO 2021, No. 12, item 102).

\textsuperscript{63} Szawelski, Thiel, \textit{Legitymowanie...,} p. 8.

\textsuperscript{64} Journal of Laws of 2020, item 192 (the “Regulation of 4 February 2020”).
and surname in such a way that this information can be recorded, as well as the reason for carrying out the measures in question and, if the person concerned so wishes, also the legal basis for the measures (§ 2 (1) of the Regulation of 4 February 2020). In addition, a plainclothes police officer must present their police identification card and, upon request of the person being checked, show it in such a way that the information contained therein can be recorded (§ 2 (2) of the Regulation of 4 February 2020).

The Regulation of 4 February 2020 also lists the types of documents that can serve as a basis for identifying a person. First of all, the identity of a person should be established on the basis of a Polish personal identity card (dowód osobisty), a passport or a foreign identity document, or also an electronic identity document (§ 3 (1)–(4) of the Regulation of 4 February 2020). Identity can also be confirmed by any other document with the holder’s photo if it has a number (e.g., a driving licence or student ID card) or by information from a police fingerprint database or even by a statement from another person whose identity has already been confirmed (§ 3 (5)–(7) of the Regulation of 4 February 2020). This suggests that every person should be in possession of one of the listed documents in order to comply with the obligation to disclose their identity. However, it should be borne in mind that there is currently no provision in Polish law that explicitly requires every person to carry an identity card. Therefore, a person’s identity and other particulars can be determined on the basis of their statements. Indeed, the law provides that only the failure to provide information or an identity document will result in liability for a minor offence. At the same time, this means that if a person has no documents but reveals all information about their identity, the police are not a priori entitled to arrest them and bring them in for further identity verification.

The conduct of identity checks is always recorded in the official police record book, which can also be kept in digital form (§ 7 (2) of the Regulation). Records should include the date, time and place of the identity check and the reasons for it, as well as the name and address of the person whose identity is being checked, their national identification number (PESEL) (and failing that, their date and place of birth and the names of their parents) and the number of the document identifying the person (§ 7 (1) of the Regulation of 4 February 2020).

The course of the identity check may also be recorded by the officers using body-worn cameras. The basis for their use is Article 15 (1) (5b) of the Police Act, as applicable from 6 February 2019. This provision authorises observation and recording by technical means for video or audio recording during interventions in non-public places, as well as during counter-terrorism operations and support for the activities of police organisational units by the counter-terrorism service in conditions posing a particular threat or requiring the use of special forces and means and

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65 The Act of 14 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Ustawa z 14 grudnia 2018 r. o ochronie danych osobowych przetwarzanych w związku z zapobieganiem i zwalczaniem przestępczości) (Journal of Laws of 2019, item 125).
special operational tactics, as well as in police means of transport. The introduction of such a regulation was necessary because until 2019 the use of body-worn cameras was possible on the basis of Article 15 (1) (5a) of the Police Act, but only in public places. It is important to note that when using body-worn cameras in the first of these cases, i.e. when intervening in non-public places, the police officer should warn the person against whom he or she is taking action as much as possible about the video or audio recording (Article 15c of the Police Act). At the same time, it was clarified that the term “intervention” in Article 15 (1) (5b) of the Police Act means the engagement of a police officer or police officers in an event that may violate legal norms, as well as the taking of measures to determine the nature, character and circumstances of the event and measures to restore the legal order that has been violated (Article 15 (7c) of the Police Act). The use of body-worn cameras by police officers, including during identity checks, is a relatively new topic and has been little researched so far.

The Police Act provides for a mechanism to review identity checks. The person subjected to an identity check may question the manner in which the measure was carried out and has the right to lodge an interlocutory appeal (zażalenie) with a public prosecutor (Article 15(7) of the Police Act). The police officer carrying out an identity check is obliged to inform the person checked of the right to lodge the interlocutory appeal (§ 2 (4) of the Regulation of 4 February 2020). It should be noted that the Police Act and the Regulation of 4 February 2020 indicate that the interlocutory appeal can only be lodged against the “manner” in which the identity check was carried out, whereas a person arrested on the basis of the Code of Criminal Procedure can request a review of the “validity, legality and correctness” of the arrest (Article 246 § 1 CCP). Therefore, identity checks are not subject to judicial review. This fact was confirmed by the Supreme Court in one of its judgments, in which the court pointed out that arrests on the basis of Article 15 (1) (2) and (3) of the Police Act are to be distinguished from other cases in which persons are forced to participate in procedures from which they evade, and ruled that the latter are not subject to judicial review.

Identity checks in the practice of the Polish police

The practical and normative aspects of identity checks are different. In order to get a full picture of a particular legal concept, one should not only examine its legal status, but also consider how it functions in reality. However, such a consideration in relation to identity checks is not

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67 Order of the Supreme Court of 7 February 2005 (II K 325/04, LEX no. 149601).
straightforward. So far, there are no empirical studies in this area; statistics on the frequency of identity checks are not publicly available either. However, the data collected in the context of the Access to Public Information procedure indicate that identity checks are carried out very frequently (see Charts 1 and 2), although it should be emphasised that the figures mentioned also include identity checks during traffic stops.

Chart 1

Measured under Article 15 (1) (1)–(3) of the Police Act, January–February 2020

Source: data of the National Police Headquarters obtained on 12 March 2020 in response to Access to Public Information request GIP 1054/20.

Chart 2

Identity checks, 2010–2020

Source: data of the National Police Headquarters obtained on 18 February 2021 in response to Access to Public Information request KWO 1772/20/AW.
Given such widespread use of identity checks, it must be all the more surprising that legal scholars show little interest in this measure.

Due to the lack of empirical research, only the analysis of the jurisprudence of the ordinary courts and the Supreme Court on this topic can provide an insight into the practice of identity checks. In court decisions, the issue of identity checks has been raised with increasing frequency in recent years, either in the context of Article 65 CMO or with the distinction between identity checks and arrest, also in the context of claims for compensation for financial and moral damages caused by a manifestly unjustified arrest. It can even be said that a judicial standard for the conduct of identity checks is now being created, which should guide the relevant police practices. It is therefore worth taking a closer look at the positions taken by the courts.

As mentioned above, the legal basis for identity checks and the rules governing their conduct are mostly analysed by the courts on the basis of Article 65 § 2 CMO, which establishes legal liability for refusing to provide information to a competent body. However, case law emphasises that the obligation to provide information only exists when an authorised official completes the first stage of the identity check procedure and, in particular, provides their name and rank in such a way that this information can be recorded, indicates the legal and factual basis for the identity check and informs the accused of the accused’s rights. If these elements of the identity check procedure are not properly carried out, the person who refuses to provide their information does not commit the minor offence under Article 65 § 2 CMO.

Moreover, the case law of the Supreme Court clearly shows a tendency to indicate that the existence of a legal basis for an identity check must be examined in order to determine whether the elements of the minor offence under Article 65 § 2 CMO exist. For example, in judgment of 31 March 2021, the Supreme Court stated that “the district court therefore had to examine whether there was any legal basis at all for the police officer asking the accused to provide her personal data during the incident. According to K.K.’s testimony, the woman whose identity was checked was holding a banner with the inscription (...) and the reason for the intervention was the fact that “the inscription on the banner could offend the leadership of the Police or that of the Ministry of Interior and Administration and such persons should be identified” (file bundle 7). However, the Ombudsman rightly stresses that the quoted wording of the inscription did not contain a name or a specific position that would have made it possible to identify the person to whom it was meant to refer”. A similar position was also taken by the Supreme Court in judgment of 25 March 2021, the reasoning of which contains a more detailed analysis of the issue at hand. It is therefore worth quoting a substantial part of the Court’s reasoning in detail: “It is worth recalling

68 Judgment of the District Court in Warsaw of 18 September 2018 (XI W 5222/17, LEX no. 2622663).
69 Case no. II KK 422/20, TSO 2021, No. 12, item 102.
70 Case no. II KK 40/21, OSNK 2021, no. 5, item 21.
here that Article 7 of the Constitution of the Republic of Poland formulates
the principle of legality, which means that the competence (and the measures
taken in the exercise of that competence) of any public body must be based
on a clearly formulated legal provision. The manner in which state bodies
exercise their powers is not an expression of the arbitrariness of their ac-
tions, but the result of the implementation of the powers conferred on them.
Any action that exceeds these powers is unlawful (cf. B. Banaszak, Konstytucja
scholars, while describing in detail the conditions for the lawful making use
of the power granted to a public official to make such interference, note that
the official must have the subject matter and territorial jurisdiction to do so,
1) both the procedural and the substantive requirements for the initiation
and execution of the interference must be fulfilled,
2) the interference must be performed in accordance with the prescribed
legal procedure for its implementation (cf. Ł. Pohl, Prawo karne. Wy-
kład części ogólnej, Warszawa 2013, pp. 258–230). (...) Thus, a police officer has the right to verify the identity of persons if,
in his opinion, the establishment of identity is necessary for the perform-
ance of official steps, such as the identification of a person suspected
of a criminal offence or a minor offence, the identification of witnesses
to an event that has led to a breach of public security or order, the search
for missing persons or persons hiding from justice, or in the vicinity
of protected facilities. (...) The conduct of R.W. on 5 April 2020, which
consisted of reading a book in (...) Park in Ł., did not constitute a mi-
nor offence. Therefore, the Court is obliged to make the essential finding
as to whether there was a legal basis for the verification of R.W.’s identity
in the present case. It is clear from the above considerations that the
Supreme Court understands by the existence of a legal basis for carrying
out an identity check not only the formal validity of a particular provision
in the legal order — such a provision is clearly present in the Police Act
and remains in force — but also the existence of an actual or even — con-
trary to the wording used by the Supreme Court — the factual necessity
to apply it. In other words: according to the Supreme Court, the general
power to carry out identity checks of persons cannot be exercised in isola-
tion from its relationship to the tasks of the police or other law enforce-
ment authorities. The jurisprudence of the ordinary courts also points
out that under “Article 15 (1) (1) of the Police Act read in conjunction with
Article 14 of the Police Act, identity checks of persons to ascertain their
identity may be carried out by the police to investigate, prevent and detect
criminal offences, tax offences and minor offences, as well as to search for
persons hiding from law enforcement or judicial authorities, or persons
who need to be found due to an event that prevents the establishment
of their residence, in order to ensure the protection of their life, health
or liberty.” This power is thus only granted if the fulfilment of the tasks

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71 Ibid.
72 Judgment of the District Court in Warsaw of 27 April 2021, (II K 308/21, LEX
no. 3197223).
of the authorities requires the identification of a specific person and the measures and the manner in which they are carried out are within the limits set by the constitutional principle of proportionality.

A separate strand of case law that stands out is the consideration of the distinction between the identity check and arrest. This is because in practice it happens that the person checked is taken to the nearest police station due to refusal to provide information or lack of documents. The courts have in the past taken the view that taking a person to a police station in these circumstances is generally not an arrest, but an element of an identity check. However, the literature rightly criticises this view and aptly points out that the inability to establish a person’s identity is, after all, one of the legal grounds for arrest (Article 244 § 1 CCP)\textsuperscript{73}. Moreover, it is difficult to accept the notion that forcibly moving a person to another location is an element of the identity check procedure. Actions of this kind must undoubtedly be considered as an arrest, as they involve a deprivation of liberty (albeit brief) and not a mere restriction of liberty.

The courts have also examined incidents that can be classified as arrests, where large numbers of people are subjected to identity checks over many hours in connection with attending public meetings, including the cases when such persons were confined within a police cordon. The Regional Court and the Court of Appeal in Warsaw found that such measures, even if not treated as arrests by the police (as evidenced, for example, by the absence of arrest reports and the lack of indication of the legal basis), should be classified as such, given the actual nature of the measure in question, \textit{i.e.} its long duration, the extent of the interference with personal liberty or the connection of the measures taken with the purpose of establishing the identity of a person\textsuperscript{74}. If this connection has not been established and the state of preventing a person from leaving a particular place for longer than is necessary to establish their identity, this indicates a de facto arrest of a person who is formally subject only to an identity check, and opens the way for such a measure to be challenged as an arrest before a court, as well as for an award of compensation for moral damages if the detention is manifestly unjustified. Such compensation is sometimes awarded in practice\textsuperscript{75}. In other words: It is not the formal qualification or the fact of drawing up an arrest report but the actual course of a particular measure that determines that the measure becomes an arrest, while the permissible duration of an identity check is determined strictly by its purpose, namely to establish the identity of a


\textsuperscript{74} Judgment of the Court of Appeal in Warsaw of 27 December 2018 (XVIII Ko 61/18, LEX no. 2774068); judgment of the Court of Appeal in Warsaw of 12 March 2021 (II AKa 355/20, LEX No. 3190313). It should be noted that in the latter ruling, the court considered the cordonning off of demonstrators by police officers to be an incapacitating measure (środek obezwładniający) within the meaning of the Act of 24 May 2013 on coercive measures and firearms (Ustawa z 24 maja 2013 r. o środkach przymusu bezpośredniego i broni palnej, Journal of Laws of 2023, item 202).

\textsuperscript{75} Ibid.
person — and may not exceed the limit of proportionality in the strict sense of the term (Article 31 (3) of the Constitution).

A review of the practice of identity checks – insofar as it was possible through the data collected and the available case law – leads to the following conclusions: First, identity checks are a very common measure in practice — probably the most common police procedure citizens have to deal with. Second, in practice, it can sometimes be difficult to define the grounds for this procedure and the limits of its intrusiveness, which gives leeway to the courts. In turn, it is becoming increasingly clear in case law that there must be a concrete factual basis for an identity check and that the intensity of the intervention, especially the duration, must only be within the necessary limits.

Conclusions

The analysis of the legislation, the views of academia and jurisprudence, and the statistical data obtained allow several conclusions to be drawn. First, identity checks are a common policing measure (taken by the police or other authorised bodies) that results in a restriction of a person’s liberty and are therefore subject to the constitutional and Convention law standards for the imposition of such restrictions. However, in light of the ECtHR’s jurisprudence, it is difficult to speak of a sophisticated Convention standard for identity checks. As a rule, the ECtHR does not consider identity checks to be a deprivation of liberty (Article 5 ECHR) or an interference with freedom of movement (Article 2 of Protocol No. 4 to the ECHR); on the basis of Article 8 of the ECHR, which protects the right to privacy. On the other hand, the ECtHR has examined identity checks in the context of a search of a person (or a personal check within the meaning of the Police Act and, hypothetically, also a preventive inspection) or identity checks on discriminatory grounds. The ECtHR also emphasises that the requirement of legislative specificity of the interference with individual rights must be met. This includes not only the obligation to provide a formal legal basis for such interference, but also to ensure the quality and precision of national norms, their accessibility to individuals and effective remedies. In this context, it should be noted that identity checks in the Polish legal system are not subject to judicial review, but can only be challenged by means of an appeal to the public prosecutor – which does not mean, however, that the Polish regime is fundamentally incompatible with the ECHR.

In terms of the constitutional standard, the effect of recognising identity checks as a restriction rather than a deprivation of liberty (although this distinction is quite borderline) is that this measure falls only under Article 41 (1) and not Article 41 (2)–(5) of the Constitution. However, the implementation of the resulting standard under the current law is a cause for concern. While the legal basis for the identity check itself – in accordance with Article 41 (1) of the Constitution – has indeed been formulated
at the level of primary legislation, the decision to relegate the regulation of the identity check procedure to an act of subordinate law (a regulation) raises constitutional questions, as does the failure to explicitly define the grounds for the identity check. Article 41 (1) of the Constitution formulates the requirement of a statutory definition of the principles and procedure for restricting personal liberty. In the meantime, given the current state of the law, a layperson might get the impression that any person can be subjected to an identity check at any time and without any reason – as the Police Act does not explicitly define grounds for the permissibility of this measure. However, such a conclusion is contradicted by recent jurisprudence of the ordinary courts and the Supreme Court, which clearly states that there must be a necessity in connection with the performance of one of the duties listed in Article 14 of the Police Act. The courts have therefore sought to remedy the shortcomings of the legislative framework. However, there is no doubt that the shaping of the correct practice of identity checks by the police and other authorised bodies would clearly be encouraged by the clarification of the statutory provisions. In this context, it is also worth noting that another shortcoming of the statutory regulation is that the basis for appeals against identity checks filed with the public prosecutor’s office is too narrow. Under the current law, the appeal can only relate to the way the measure is carried out. In the light of case law, however, the identity check may also be flawed because it is used outside the permissible limits of its application. In view of the above, the grounds for the appeal should cover — as in the case of arrest — the validity, legality and correctness of the identity check.

The constitutional standard of identity checks is of course complemented by Article 31 (3) of the Constitution. Identity checks as measures restricting liberty can therefore only be carried out if they pursue a constitutionally recognised objective and are necessary for this purpose. The degree of interference with the freedom of the individual must always be within the limits strictly set by the purpose of the measure in question. As an overview of the case law of the ordinary courts shows, these limits are sometimes not respected in practice. In such situations, however, the identity check may, as rightly pointed out in the case law, lose its character and turn into an arrest with all the consequences that ensue — even if it is not formally classified as such by the police officers carrying it out.

In conclusion, it would be inappropriate to consider identity checks as a low-intensity intrusive measure, especially in light of their significant discriminatory potential (recognised in the literature of other European countries) and the cases of excessive prolongation of this measure, as established in the case law of the Polish courts, resulting in identity checks becoming arrests, as well as the surprisingly high statistical frequency of recourse to this measure. On the one hand, this procedure is an important tool to fulfil the legal tasks of the police, on the other hand, it can significantly restrict the personal liberty of an individual. Identity checks should therefore be the subject of further theoretical reflection and empirical research, leading to a better understanding of the practice of their
application and making it possible to make recommendations on the validity of recourse to this measure and the way in which it should be carried out, in order to ensure a balance between the protection of the public interest and the freedom of the individual. Another point is the implementation of an adequate training programme that will enable officers to exercise their legal powers professionally and avoid situations in which identity checks become an instrument of excessive and totally ineffective (from policing perspective) control by the authorities over the public and, consequently, lead to an erosion of confidence in the institutions of the state and the law it has created.

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Keywords: identity check, individual’s rights, body-worn cameras, restriction and deprivation of liberty, arrest, police.

Summary: The paper deals with the legal framework for identity checks in Poland and the practice of this measure by the competent bodies. First, the constitutional and international law standard is analysed, followed by the statutory and sub-legislative provisions concerning the identity check procedure. Attention was paid to the grounds for an identity check, the determination of the authority responsible for carrying out this procedure and the course of the procedure. This elaboration also points out the crucial importance of court decisions in determining the limits of legality of identity checks. Indeed, the courts have emphasised that strict compliance with the procedural rules for identity checks by police officers, as well as the existence of grounds justifying the verification of a person’s identity, are important in determining the obligation to present an identity document. The courts have also developed criteria to distinguish between identity checks and arrest. They conclude that there is a lack of specific norms for identity checks in constitutional and international law. Nevertheless, the Constitution of the Republic of Poland stipulates that the grounds and the main issues concerning the procedure for carrying out identity checks must be regulated in a law. A review of statutory provisions leads to the conclusion that this first element is not fulfilled. However, it can be seen that this gap is at least currently being attempted to be closed by the courts, which clearly signal that the circumstances justifying the identity check of a person must be stated. Notwithstanding the above, it would be advisable for the legislator to intervene on this point. It is noted that the courts have correctly made a strict distinction between identity checks and arrests. The relevant criterion is not the purpose of the steps taken by the competent body, but the degree and duration of the interference with the rights of the individual.
**Palabras clave:** Controles de identidad, derechos individuales, restricción y privación de libertad, parada y detención, policía

**Resumen:** El artículo aborda el problema de la regulación jurídica del control de identidad policial en Polonia y su aplicación por parte de los órganos autorizados. En primer lugar, se analizan las normas jurídicas constitucionales e internacionales, seguidas del análisis de las normas estatutarias y subestatutarias relativas a esta actividad. Se presta atención a los requisitos previos del control de identidad, al problema de la determinación de la autoridad competente para ejercer esta actividad y a su curso. El estudio también señala la gran relevancia de las decisiones judiciales para determinar los límites de la legalidad de dicha actividad. La jurisprudencia subraya que la estricta observancia del procedimiento del control de identidad por parte de los agentes de policía, así como la existencia de premisas que justifiquen la comprobación de la identidad de un individuo, revisten una importancia esencial para la actualización del deber de identificarse. Los tribunales también han desarrollado criterios para distinguir entre el control de identidad y la detención. En conclusión, se señaló que a nivel constitucional y jurídico internacional no existen normas detalladas relativas al control de identidad policial. No obstante, la Constitución de la República de Polonia exige la regulación estatutaria de los requisitos previos y las cuestiones clave relativas al procedimiento para llevar a cabo esta actividad. El análisis de la regulación estatutaria lleva a la conclusión de que el primer elemento no se ha cumplido. De todos modos, se observa que este vacío, al menos en la actualidad, está siendo llenado por los tribunales, que señalan claramente la necesidad de indicar las circunstancias que justifican la legitimación de una persona. Con todo, sería aconsejable que el legislador interviniera a este respecto. También se llamó la atención sobre la acertada aproximación de la judicatura a la necesidad de distinguir estrictamente entre el control de identidad y la detención. El criterio en este caso no es la finalidad de la acción emprendida por la autoridad autorizada, sino el grado y la duración de la injerencia en los derechos del individuo.