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Institution of Emergency States in Polish Jurisdiction. Practical Remarks

Abstract

The issues presented in this article are focused on solutions adopted by the Polish legislator when introducing emergency states. The author attempts to present the legal conditions to introduce states of emergency while indicating difficulties to fulfill enacted requirements. The Author points out loopholes in legal provisions, ambiguous definitions, insufficiency and inaccuracy of the law concerning states of emergency. The author cites other regulations regarding crisis management and emphasizes the existence of a thin line between authorities' actions during a crisis and during emergency states, especially in a state of natural disaster.

Keywords: constitution, state of exception, state of natural calamity, state of emergency, martial law, crisis management

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Instytucja stanów nadzwyczajnych w polskim ustawodawstwie. Praktyczne uwagi

Abstrakt

Przedstawiona w niniejszym artykule problematyka skupia się wokół zagadnień związanych z rozwiązaniami przyjętymi przez polskiego prawodawcę przy wprowadzaniu stanów nadzwyczajnych. Autor stara się przedstawić uwarunkowania prawne towarzyszące wprowadzeniu poszczególnych stanów nadzwyczajnych przy jednoczesnym wskazaniu trudności spełnienia przyjętych rozwiązań, luk, niedopowiedzeń czy pozostawieniu pewnej dowolności interpretacyjnej przedmiotowych przepisów. W tle tych rozważań przywołuje uregulowania

dotyczące zarządzania kryzysowego i wskazuje na cienką granicę pomiędzy działaniem organów władzy w sytuacji kryzysowej a w stanie nadzwyczajnym, zwłaszcza w stanie klęski żywiołowej.

Słowa klucze: konstytucja, stan nadzwyczajny, stan klęski żywiołowej, stan wyjątkowy, stan wojenny, zarządzanie kryzysowe

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Поняття надзвичайних станів у польському законодавстві. Практичні зауваження

Анотація

Проблематика, представлена в цій статті, зосереджена навколо тем пов'язаних з рішеннями польського законодавця під час запровадженні надзвичайних станів. Автор намагається представити правні умови, що супроводжують введення окремих надзвичайних станів, при цьому вказуючи на труднощі у виконанні прийнятих рішень, прогалини, непорозуміння або залишаючи певну свободу в інтерпретації описаних питань. На фоні цих міркувань пвтор подає положення про кризове управління та вказує на тонку межу між діяльністю органів влади в кризовій ситуації та надзвичайним станом, особливо в умовах стихійного лиха.

Ключові слова: конституція, надзвичайний стан, стан стихійного лиха, надзвичайний стан, воєнний стан, кризове управління

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Introduction

Each country, regardless of the place and time, its political regime or wealth, is exposed to all kinds of hazards and crises. To assure security, diverse legal regulations are devised that serve as a basis for the functioning of specific bodies, institutions, inspections or guards. The objective of such measures is to prevent, and should that prove to be impossible – to minimise the consequences of the above mentioned hazards and crises. Legal

regulations in this respect should be explicit, clear, and what is more important – fully transparent. Obligations that encumber primarily bodies of state administration bodies, relating to the security of the state and its citizens, should assure that in unexpected events no doubts could arise as to the scope of liability of each of them. The institution of states of exception is not relevant only for the present basic law. The constitutionalisation of issues related to states of exception in the Polish legal order has already been implemented in the March constitution, in its art. 124. This regulation pertained to two institutions, i.e. the martial law and the state of emergency. The first one of them could only be declared by the Council of Ministers with approval of the President of the Republic of Poland during war or in the event of a mere threat of war, and the second one – "in the event of internal riots or extensive conspiracies having the nature of high treason, endangering the State Constitution or security of the citizens"[1] [7]. In the presently binding Constitution of the Republic of Poland, which dedicated a separate section to states of exception, we may find that the constitutional legislator has regulated those problems to a much wider extent.

The objective of this paper is to make the reader familiar with the institution of states of exception and legal, organisational and technical problems related to their introduction, and also to present the thin line between operation of authorities in a crisis situation and in a state of exception, particularly in the state of natural calamity.

Constitution of the Republic of Poland

The Constitution of the Republic of Poland specifies three types of states of exception: martial law, state of emergency and state of natural calamity. It should be emphasised, however, that this is not a finite catalogue, because the constitutional legislator also specified the state of war[2], yet this issue will not be a subject of the present paper. The institution of states of exception is only applicable in specific cases – when common constitutional means prove to be insufficient to eliminate or minimise consequences of hazards which had already occurred. This is also confirmed by the Constitution of

1 It should be borne in mind that the term „state of exception" has not been used by the constitutional legislator until the approval of the Constitution of the Republic of Poland of 2 April 1997 (Polish Journal of Laws/Dz.U. from 1997 No. 78, item 483 as later amended).

2 The state of war is a concept in the field of international law comprised by the Convention of 18 October 1907 *on commencement of the hostilities* (Polish Journal of Laws/Dz.U. from 1927 No. 21, item 159).

the Republic of Poland and acts that regulate the legal status of those states. It may be presumed that the declaration of a state of exception by way of a regulation drastically changes the legal situation of the citizens and many people subordinated to state authorities, because it gives rise to the possibility of limiting their freedom and rights in a much more extensive way than in the period of normal state functioning. Their name as such indicates that we are not faced with a standard situation, but with a specific hazard to which it is impossible to react with the use of common instruments, and instead the need arises of applying extraordinary measures, instigated according to a strictly defined mode of operation.

A review of art. 228 of the Constitution of the Republic of Poland allows the presumption that all states of exception should be characterised by the following principles: exceptionality, legality, proportionality, pertinence, protection of fundamentals of the legal system and protection of representative bodies [1, p. 17]. Actions taken as a result of a declared state of exception must be appropriate to the level of hazard and should be aimed at the quickest possible restoration of normal functioning of the state [8, art. 228, par. 5].

The declaration of a state of exception is connected with protection of the state existence. This shows that it is necessary to adopt an approach oriented at protecting the Republic of Poland as a common good of all citizens. To be able to achieve that in some cases it might be necessary to limit rights and freedoms of individuals specified in the Constitution of the Republic of Poland, including the freedom of economic activity. The legislator has defined the scope of those limitations in particular acts pertaining to states of exception. Furthermore, the Constitution of the Republic of Poland clearly states that in such a period they are of an optional nature and public authority bodies should adopt such limitations only in absolutely exceptional circumstances [3, p. 70]. This shows that the functioning of the state in a state of exception does not empower the authorities to unhindered and unlimited actions, because rights and freedoms of the citizens still remain binding (especially in the case of a state of natural calamity), and their limitation should have a serious substantive substantiation. When declaring martial law and the state of emergency the scope of imposed limitations may not impair such freedom and rights as: human dignity, protection of life, humane treatment, free access to the court, freedom of conscience, religious freedom, and no discrimination is allowed that could be manifested in the lack of legal possibilities of adopting any limitations arising from race, gender, language, religion or its lack, social origins, birth and property [8, art. 233]. As regards the state of natural calamity, the regulation

pertaining to limiting the freedom and rights of an individual should be formulated in a slightly different way. The constitutional legislator has strictly defined freedoms and right that could be limited by way of the act. This applies among others to freedom to economic activity, personal freedom, inviolability of the dwelling, freedom of movement and stay on the territory of Poland, the right to striking, and the right to property, free work, right to safe and healthy working conditions.

What is particularly important, the constitutional legislator has introduced a legislative prohibition, according to which in the event of declaration of any of states of exception no changes would be admissible to the following: the Constitution of the Republic of Poland, election law rules to the Sejm, the Senate and territorial self-government bodies, the act on appointment of the President of the Republic of Poland and the act on states of exception. Moreover, during the state of exception and during 90 days since its ending, it is inadmissible to shorten the term of office of the Sejm, hold national referenda, elections to the Sejm and the Senate, territorial self-government bodies and the President of the Republic of Poland, and the terms of office of those bodies become appropriately extended. Elections to bodies of territorial self-government bodies are only possible where a state of exception is not declared [8, art. 228, par. 6]. This solution allows on the one hand focusing actions on reversal of the hazard, and on the other hand – protects the citizens from potential use of the institution of states of exception to manipulate the election procedure. General elections of public authority bodies are only justified in conditions that assure full freedom of expressing the will by the voters [15]. Below the author presents a brief outline of all three states of exception, and its intention is to point out basic differences between them. The discussion will commence with the state of natural calamity, then the state of emergency, and finally the martial law.

State of natural calamity

The state of natural calamity may be declared to prevent the consequences of natural disasters or technical failures with features of natural calamity [3] and to have them

3 Natural calamity – this term implies a natural disaster or a technical failure, the consequences of which endanger the life or health of a large number of people, property on a large scale or the environment on larger areas, and the help and protection may be effectively undertaken if extraordinary measures are adopted, in cooperation with diverse bodies and institutions, as well as specialist services and formations operating under unified management.

eliminated [9, art. 2]. This state may be declared by the Council of Ministers for a fixed period, which may not be longer than 30 days, on a part or the entire the state territory, and the extension of that period may only take place with consent of the Sejm [8, art. 232]. Nevertheless, the regulation pertaining to the possibility of extending the period of that state fails to indicate by what period it can be extended. This is all the more important as the state of natural calamity, similarly as the two remaining states of exception, rules out the possibility of elections, and so the term of office of the parliament, of the President of the Republic of Poland or a territorial self-government unit becomes *de facto* extended. In the author's opinion such arbitrariness gives rise to the temptation of various manipulations by the Polish Sejm aimed at the longest possible extension of the binding term of office. As an effect it might be worthwhile to consider further particularisation of the mentioned provisions. One should bear in mind article 6 of the act *on the state of natural calamity*, which clearly states that this state may be extended only by a definite period. Yet such a solution is only of a partial nature. Taking into consideration Polish and European experience related to natural calamities and technical failures, the author suggests making a presumption that the state of natural calamity may be extended with consent of the Sejm, but by a maximum of 60–90 days.

Contrary to other states of exception, the body empowered to declaring the state of natural calamity is the Council of Ministers, and not the President of the Republic of Poland. This seems to be rather obvious, given that internal security, and in particular crisis management on the territory of Poland, is the liability of the Council of Ministers, the Prime Minister or the minister of the interior. What is more, in the event of a regulation of the Council of Ministers declaring a state of natural calamity its control by the Polish Sejm is not indispensable.

In the period of a natural calamity modifications may take place of rights and obligations of the public authorities. Preventing its consequences or their elimination lies in the competencies of the commune head (mayor), head of district or provincial governor, the competence being designated based on the area affected by the state of natural calamity. Among empowered entities the legislator also mentions the minister of public administration issues or another minister, whose scope of operation comprises preventing the consequences of the given natural calamity or their elimination, and should any doubts arise as to the competence of the minister or if a few ministers are competent – the minister assigned by the Prime Minister, if state of natural calamity has been declared on an area of more than one province [9, art. 8]. Those provisions

seem to be justified, especially when one takes into account that those bodies are also relevant for issues related to crisis management [12, art. 14, 17, 19], under which tasks of the above mentioned bodies comprise among others managing of monitoring, planning, responding and elimination of consequences of hazards on the territory they are liable for. To prevent consequences of a natural calamity or to eliminate them the commune head, the head of district and the provincial governor may issue binding instructions to heads of organisational units established on the given area (commune, county, province), heads of various services, inspections and guards, heads of firefighting units operating on the given area and managers of organisational units delegated temporarily to their disposal. In addition those provisions tend to introduce a certain hierarchical subordination of the commune head in relation to the head of district and the head of district in relation to the provincial governor.

"During the state of natural calamity, if the deployment of other forces and means is impossible or insufficient, the Minister of National Defence may delegate units or squads of the Polish Armed Forces to the disposal of the provincial governor, on whose area of operation a natural calamity occurs, including their deployment to tasks related to preventing the consequences of a natural calamity or their elimination" [9, art. 18, par. 1]. However, at this point it should be emphasised that this may also be done without the declaration of a state of exception based on the act *on general obligation of defence*[4] and pursuant to the already quoted act *on crisis management*.

Consequently the declaration of a state of natural calamity is a flexible mechanism, the adoption of which depends only on the political decision of government members. The prime minister and his ministers are not obliged by the law to declare a state of exception, if they decide that hitherto means are sufficient to cope with the hazard being faced. Furthermore, attention should be drawn to the fact that the act that determines the natural calamity makes purposeful use of such vague terms, as "a high number of persons" or "larger areas". The scale of the hazard or of the actual losses has been left to the discretion of the decision makers. The legislator has correctly assumed that

4 Combatting natural disasters and the elimination of their consequences, anti-terrorist actions and activities related to property protection, search actions, rescue operations or actions of protecting human life or health, cleaning lands of explosivtes and hazardous materials of military origin and their neutralisation, as well as in the implementation of tasks as part of crisis management may be entrusted to the Polish Armed Forces (art. 3 par. 2 of the act of 21 November 1967 *on universal duty to defend the Republic of Poland* (Polish Journal of Laws/Dz.U. from 2019 item 1541 as later amended)

one should act based on common sense, experience and data obtained from relevant institutions, because it is impossible to regulate all modes of operation to be adopted in the event of occurrence of all types of crisis situations. Pursuant to the Constitution of the Republic of Poland, the declaration of the state of natural calamity may be oriented not only at eliminating, but also preventing potential consequences of natural disasters – which means that the disaster as such does not have to occur yet for such a state to be declared. The fact that in situations of particular hazards, if common constitutional means are insufficient, a state of exception may be declared, which means that not each natural calamity entails the declaration of the state of this calamity, because it is indispensable to recognise common constitutional means as insufficient [16, p. 84]. One should also bear in mind that the reason for the declaration of a state of natural calamity may not be limited to forces of nature, but also intentional activity of man, the consequence of which may be for example a serious technical failure or a natural disaster. This shows that the legislator has correctly anticipated such a possibility, stating directly that such a state may be declared as an effect of a natural disaster or technical failure also arising from events in cyberspace and actions of a terrorist nature. The constitutional legislator has pointed out that particular acts pertaining to states of exception may specify the basis, scope and method of compensating material losses arising from limitation of the freedom and rights of man and citizen during a state of exception. The normative act that regulates the issues of declaring a state of natural calamity or other states of exception lacks any provision referring to those issues, instead they are comprised by a separate act that literally states any person who has suffered a material loss as a consequence of a limitation of freedoms and rights of an individual and a citizen in the period of a state of exception shall have the right to compensation. The compensation comprises reparation for a material loss, yet without profits which could have been achieved by the afflicted person if the said loss has not occurred [13, art. 2, par. 2]. Furthermore, compensation is not admitted also if the material loss was incurred solely due to conduct of the victim or caused by the fault of a third party [13, art. 3, par. 2]. It should also be borne in mind that in such a case the State Treasury is represented by various provincial governors, and it is up to their discretion to make a decision on possible payment of compensation and its value. Regulations of the act are not applicable to a situation when during a state of exception the public authority causes harm by its exercising in a way inconsistent with the binding law. In this particular case relevant provisions of the *Civil Code* shall be applicable [14, art. 417]. Nevertheless the occurrence of an incident of the nature of

a natural calamity is not tantamount to imposing on the state of an absolute obligation of providing material assistance to persons afflicted as an effect of forces of nature or the occurrence of a technical failure.

State of emergency

A state of emergency may be declared in the event of specific constitutional hazard to the political system, security of the citizens and public order, including one caused by terrorist actions, which may not be eliminated by simple constitutional measures. The act provides further formulation of the types of hazards that may cause the declaration of such a state. This is due to the fact that the Constitution of the Republic of Poland does not refer in any way to "terrorist threats"; this issue, similarly as in the case of the act on the state of natural calamity, had been added by the legislator. If a state of emergency is declared, executive bodies operate jointly. If any of the above mentioned premises for declaration of state of emergency occurs, the decision is up to the Council of Ministers, which adopts an appropriate resolution in this respect and sends an application to the President of the Republic of Poland. The latter one may declare the state of emergency by way of a regulation, for a fixed period, no longer than 90 days on a part of the country or on its entire territory. Yet of the state of emergency may be extended, which may be done only once, with consent of the Polish Sejm, for a time no longer than 60 days [8, art. 230]. However, the above mentioned regulation requires consent from the Polish Sejm, which may repeal it by an absolute majority of votes at the presence of at least half of the statutory number of deputies [8, art. 231]. This means that despite obvious reasons, i.e. an increase in the role of the executive during a state of emergency, the Polish legislator took care to maintain the political position of the Sejm in the public authority system. For this reason, in the event of the state of emergency a possibility arises of adopting or waiving a decision by President of the Republic of Poland, as well as the exercising by that body of all competencies assumed for the period of normal function of the state. However, the author has concerns as to the lack of specific regulations concerning technical aspects for convening and holding sessions by the Polish Sejm in a state of emergency, taking into account that one of the premises for the declaration of such a state is a threat to the constitutional state order (e.g. due to external actions). Nevertheless this does not belittle the special role played by the Prime Minister (in the event of declaration of the state of emergency on an area larger than one province) or the provincial governor (if such a state is declared on the

area of one province). It is to those entities that the execution of actions restoring the constitutional state order, security of the citizens or public order are entrusted, with particular emphasis on coordination and control of functioning of government and self-government administration. During the period of the state of emergency all local and regional self-government bodies become marginalised. Contrary to the state of natural calamity, those are not entities with the attribute of competencies concerning the restoration of the constitutional state order, assuring the security of citizens or public order in the context of the state of emergency. What is more, if territorial self-government bodies were insufficiently effective in the execution of public measures or the implementation of tasks entrusted to them pursuant to regulations on the declaration of the state of emergency, the Prime Minister, at the request of the relevant provincial governor, may suspend those bodies, and introduce receivership instead (a government commissioner). During the state of emergency the President of the Republic of Poland, at the request of the Prime Minister, may decide to deploy units and subunits of the Polish Armed Forces to restore normal functioning of the state, if the hitherto used forces and means have been depleted [10, art. 17, par. 1].

As has been mentioned earlier on, those powers are not ascribed only to the institution of states of exception. All the same it should be borne in mind that field operations are undertaken first of all by Policemen. Contrary to the state of affairs at a normal period, policemen have bigger freedom as to the use of firearms. A shot may only be taken after summons to behave pursuant to the law, give a warning on possible use of firearms and firing a warning shot. Another important right of the executory authority is the possibility of detaining persons in relation to which a justified suspicion exists that if left free they would continue acting in a way that poses a hazard to the security of the state or its citizens, and "the constitutional state order, security of the citizens or public order, or when detention is indispensable to prevent the commitment of a punishable act or to prevent the escape after its commitment. Such persons may be detained on the basis of an administrative decision without any court control, for a period of minimum 9 days" [10, art. 17]. The state of emergency is clearly a more serious state as compared to the state of natural calamity. Apart from several powers of the authorities and limitations of the citizens in the period of such a state may comprise among others pre-publication censorship, controlling the contents of correspondence and letters, controlling telecommunication correspondence and of telephone conversations, etc. At this point it should be emphasised that the declaration of the state of emergency should only take place in really extraordinary

circumstances, given the fact that public authority has sufficient capacity to cope in the mode of ordinary action with hazards that constitute premises for the declaration of this state of exception. And so if that happens, circumstances that accompany such an incident would be exceptional in full meaning of that word.

The doctrine recognises correctly that premises for the declaration of the state of emergency concern internal security, yet the rather popular view that its declaration is aimed at protecting from internal threats does not seem to be justified. One may not, because the internal threat should have its source and consequence inside the country, and – unfortunately – causes of a threat to the constitutional state order, safety of the citizens or public order, such as for example political blackmail, terrorist actions or crimes in cyberspace may also be of an internal and external nature. The author also has doubts due to insufficient definitions of such concepts, as "security of the citizens" or "public order".

As regards security of the citizens one should bear in mind all goods subject to protection according to the law, related with the fact of being a citizen of the given country, which guarantees their legal protection [5, p. 43]. The term "public order" is used first of all by the criminal and administrative law. On the other hand, issues of the public order are practically not undertaken at all by the doctrine of the constitutional law [1, p. 82]. Consequently the author agrees with Waldemar Kitler that the possibility of justifying that special cases of hazards to public order or security of the citizens have occurred, which could serve as basis for the declaration of the state of emergency, would be considerably hindered. One should also bear in mind that public administration gets prepaid to crisis situations (in understanding of the act on crisis management) and to martial law, yet the state of emergency should be considered an "orphan" or "neglected" state in this respect.

Martial law

Martial law may be declared by the President of the Republic of Poland at the request of the Council of Ministers on a part or the entire area of a state. The regulation on declaration of the martial law or of the state of emergency is presented by the president to the Sejm within a period of 48 hours since signing of the said regulation. The Sejm reviews such a regulation of the President of the Republic of Poland without delay. The Polish Sejm may revoke it by an absolute majority of votes in the presence of at least half of the statutory number of parliament members [8, art. 231]. Premises

for the declaration of the martial law comprise: external threat to the state[5], including one resulting from activities of a terrorist nature or activities in cyberspace, armed assault on the territory of the Republic of Poland or obligation to joint defence against aggression arising from an international agreement.

Particular provisions of the martial law were contained by the act *on the martial law* and *on competencies of the Supreme Commander of the Armed Forces and the principles for its subordination to constitutional bodies of the Republic of Poland* [11]. The declaration of the martial law is consequently in the competencies of executive authority bodies. When implementing a part of the competencies related to national security, the President of the Republic of Poland has been to a certain extent obligated by the legislator to cooperate with superior public authority bodies – government administration [3, p. 431]. In the period of the martial law public authority bodies operate in hitherto organisational state structures and according to their competencies, unless specific statutory provisions provide otherwise. In the period of this state specific tasks have been taken into account for the President of the Republic of Poland, the Council of Ministers, the Minister of National Defence and provincial governors and the Supreme Commander of the Polish Armed Forces. Among others the President of the Republic of Poland has the right to issuing regulations with the virtue of an act, i.e. to assume a part of competencies of the legislative authority. In the period of the martial law, in the event of direct and external threats of the state, the President of the Republic of Poland orders general or partial mobilisation and the deployment of the Armed Forces to defend Poland. This is done at the request of the Council of Ministers. On the other hand, at the request of the Prime Minister the President may appoint a Commander of the Armed Forces. The Council of Ministers orders transition to martial rules of operation of public authorities. During the period of the martial law all organisational units of government and self-government administration on the area of the given province are subordinated to provincial governors. As regards the implementation of defence tasks, government administration bodies and territorial self-government bodies are supervised at the scale of the entire country by the Minister of National Defence, and in the scale of a province – by the provincial governor [2, p. 101]. Additionally, similarly as in the case of other states of

5 An external threat of a country means intentional actions that endanger independence and territorial integrity, important interests of the Republic of Poland, or oriented at rendering impossible or to disturb normal function in of the state, undertaken by external entities.

exception, if territorial self-government bodies "fail to prove sufficient effectiveness in the execution of public tasks or in the execution of tasks arising from regulations on the declaration of martial law", receivership may be introduced [11, art. 14, par. 1].

It should also be borne in mind that according to the act it is the obligation of the minister of foreign affairs is to notify the UN Secretary General and the Secretary General of the Council of Europe of the declaration and causes for the declaration of the martial law and its repealing [11, art. 6].

The author is of the opinion that the constitutional legislator has correctly anticipated that during martial law the authorities should be concentrated in the possibly lowest number of bodies, decisions made by them should be quick and decisive, which would be highly difficult or even impossible in tedious parliamentary proceedings. What is more, one should also wonder whether in the case of a threat of a specific nature, such as premises for the declaration of martial law, a need arises of binding two executive bodies as regards issuance of decisions of key importance for the state functioning, especially taking into account contemporary threats of a terrorist nature. Those hazards may be aimed at causing a paralysis of functioning of vital Polish public authority bodies. In such situations for the effectiveness of the security system, the decision-making mode should be maximally simplified [4, p. 77].

Summary

Salus rei publicae suprema lex esto – the welfare of the state shall be the supreme – is a motto which should be adopted and serve as basis for introducing states of exception. Regardless of the nature of external or internal threat, a natural calamity or a terrorist attack we must be aware of the fact that the declaration of any of the states of exception is the last resort, when there is no other way to save the state and for its citizens, and the hazard pertains to the fundamental rules for the functioning and existence of the state. Yet it seems that the acts that pertain to states of exception were formulated under the impact of certain external impulses and with incomprehensible haste, giving rise to visible loopholes and lack of sufficiently precise definitions that allow interpretational freedom, which in the author's opinion should not take place in this aspect. In acts that regulate the given type of state of exception a lot of emphasis is placed on terrorist threats. It is hard to resist such an impression, especially that an impulse for their formulation was an intense sense of terrorist threat, and especially the WTC attack from September 2001. Fearing the possibility that a similar scenario could happen in Poland,

the Legislator "remembered" that one section of the Constitution of the Republic of Poland from 1997 was dedicated to states of exception, yet there is a lack of statutory regulations in this issue, and the declaration of any of states of exception could be justifiable after the occurrence of this type of hazard or even a mere possibility of its occurrence. Nevertheless the declaration of a state of exception would not be an easy feat, especially taking into account that fact that public authority has sufficient capability to cope with the majority of hazards defined for example in doctrinal documents in the mode of a n ordinary action. And if that does happen, circumstances that accompany such an incident would be exceptional in the full meaning of that word. And in such conditions the functioning of public authority would not be feasible without a specific mode of its organisation. For the time being this is neither regulated the Constitution, nor the relevant acts.

All those that keep demanding the declaration of one of the states of exception in the event of occurrence of the given crisis situation should also bear in mind that in Poland we have an act *on crisis management*, which defines a crisis situation as a "situation that affects adversely the safety level of people, property on a large scale or the environment, in such a way causing considerable limitations to the operation of relevant public administration bodies due to the inadequacy of forces and means at disposal" [12]. Consequently the state reacts to crisis situations and threats and counteracts them as a part of crisis management, and in the majority of cases there is no necessity of reaching for the last resort, and namely the declaration of states of exception.

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[11] Act of 29 August 2002 *on martial law and on on competencies of the Supreme Commander of the Armed Forces and the principles for its subordination to constitutional bodies of the Republic of Poland* (Polish Journal of Laws/Dz.U. No. 156, item 1301 as later amended).
[12] Act of 26 April 2007 *on crisis management* (Polish Journal of Laws/Dz.U. from 2019 item 1398).
[13] Act of 22 November 2002 *on compensating material losses arising from limitations of freedoms and rights of individual and man during a state of exception* (Polish Journal of Laws/Dz.U. from 2002 item 1955).
[14] Act of 23 April 1964 – *The Civil Code* (Polish Journal of Laws/Dz.U. from 2019 item 1145).
[15] Judgement of the Constitutional Trubinal of 26 May 1998, K 17/98, OTK 1998, No. 4, item 48.
[16] Judgement of the Supreme Administrative Court of 10 January 2002, I SA/Kr 2180/01, "Finanse Komunalne" 2003, No. 1.

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