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THE ROLE OF PUBLIC ADMINISTRATION IN EXTRAORDINARY STATES

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ABSTRACT

In the paper presented are different solutions applied in administration systems of European countries. Assuming that in European countries the most of worth-mentioning models are applied, from which derives solutions used in non-European countries, presented are the most characteristic of these models, i.e.: English, French and Swiss. Recalled was the history and short description of each of them. The paper also discuss the issue of functions of administration, which protects the public order and collective security. Considering the issue of managing in extraordinary states, the Author attempts to provide definition of this term.

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INTRODUCTION

The term 'administration' (Latin *administrare*- to be helpful) can be defined in organizational, material and formal terms. From the first point of view it is the whole of subjects of administration, from the material one – the activity of the country, which subject matter are administrative cases, and from the formal point of view – the whole activity executed by the administrative subjects[1].

There are many definitions of administration and, accordingly, a lot of its divisions. Administration may be divided according to the following criteria: the way of subordination, the scope of activity and the scope of entitlements. Taking into consideration the criterion of the way of subordination, one must differentiate: centralized-government units and decentralized ones. According to the scope of activity criterion, one can talk about: central organizations (chief body, central offices) and local bodies (government general administration, special administration). From the point of view of the scope of entitlements, one must point out the decisive and auxiliary entitlements.

The representatives of the government administration are on a central rank (the president, ministry lead by the chairman, ministers, central offices) and on a regional one (province – province governor). Local authorities fulfill the tasks on a regional (province-marshal, province assembly, management board) and local rank (the district – the district administrator, council and the commune – the mayor of the city, the mayor or the commune, council).

[1] E. Ochendowski, *Administrative law*, „House of the organiser", Toruń 2000, p. 19.

Therefore, administration is an organized activity, realized with the help of a certain apparatus and aiming at fulfilling certain goals. Such activity, which covers a set of actions, activities and organizational and executive ventures, executed in favor of realizing the public businesses by different subjects, bodies and institutions, on the basis of regulations and in the forms determined by the law, is called the public administration. In other words, the public administration is the union of different forms of administration, acting within the framework of public cases, and above all the Civil Service, government administration and local authorities. Therefore the functions of the public administration are as follows:

- Ordinal – rationing function, connected with the protection of the public order and the collective security;
- function of providing the public service through the institutions belonging to the public sector (of public utilities and administrative plants);
- function of the adjuster of the economic development manifesting itself in using classical police and rationing instruments in the form of permits, quotas, customs, as well as participation of the state in managing the national economy.

In Europe many systems of administration have been created, which caused that practically every country uses quite different solutions. Administration on other continents is generally the derivative of European solutions. Because of their distinguishing features and comparative values, English, French, German and Swiss solutions are worth mentioning[2].

The oldest model is the English one, which dates back to the 17th century, when, after the creation of parliament, administrating the territories was transferred to self-government associations. Great Britain, that is the United Kingdom of Great Britain and Northern Ireland, consists of England, Wales and Scotland – located on the island of Great Britain, and Northern Ireland, located in the northern part of the island of Ireland. Great Britain was a strongly centralized country, however in 1998 there were undertaken the reforms designating the creation of a federal state. On the basis of the accepted acts Scotland, Wales and Northern Ireland received the autonomy. England was divided into nine regions, from which three, lying in the North, acquired the great self-reliance. The case of the autonomy of remaining regions was put off for the undefined future. Considering above, it is possible to assume that the United Kingdom of Great Britain and Northern Ireland consists of four duchies which are divided into their own administrative units. The fundamental administrative division of England originates from the 70s. The duchy is divided into 54 counties, amongst which 6 constitute the biggest urbanized areas, having the status of metropolitan counties. Counties are divided into districts, and these into communes[3]. The basic principle of functioning of the English self-government is *ultra vires rule*, which allows local individuals for the accomplishment of only such tasks which were granted them by the act. So this approach is contrary to the majority of European countries, where applies the conjecture to properties closest for inhabitant of the self-government[4].

In France only in 1954 they decided on the decentralization of administration, and the

[2] See: J. Panejko, *The genesis and bases of the European self-government body*, „Impreimerie de Navarre", Paryż 1926, p. 16-21.

[3] J. Srzyp, *Administrative division of European states*, „Wszechnica Mazurska w Olecku", Olecko 2006, p. 111-112.

[4] W. Kisiel, *The local authority in the USA. Pragmatic diversity*, „Jagiellonian University", Kraków 1995, p.14-15.

appropriate reform took place in 80s. The territorial organization of the state is a three-level one and it covers 26 regions, including four overseas (Guyana, Guadeloupe, Martinique, Reunion), 100 departments and 36664 communes[5]. The main tasks of the commune are: spatial development; administering the municipal property; giving one's opinion on the route of roads, plans of developing; establishing the welfare and its execution; classification of areas of special natural, recreational, healing advantages; promotion of economic development; urbanization; housing; vocational training; part of the health care, education, welfare, environmental protections, organizing range of cultural activities. Then, the task of the regions is programming the social, cultural and economic development. Accordingly, the departments process social benefits, including: sanitary protection, keeping the post-primary education, paying benefits, holding garbage dumps, school transport and supervise the economic interventionism. It is worth mentioning that the local authorities can alone establish the manner of the execution of tasks, as well as they can cooperate to a certain extent with government individuals[6].

The history of German self-governments dates back to the 19th century. Then in Prussia a local management system was introduced, based on the institution of the local government. An organizational diversity followed the Second World War, and because of that until today it is possible to notice the elements of the Anglo-Saxon and French model in western Lands. It needs to be emphasized that 16 federated states comprise Germany (Lands – 10 in former RFN and 6 in former GDR). Among Lands there are three cities: Berlin, Bremen and Hamburg. Lands are divided into regencies, these into districts (including cities on laws of the district), then into communes[7]. The local government is on the level of the commune and the district.[8] Among performed tasks on the commune level are among others: registration, passport matters; register office records; matters of the civil defense; building supervision and the health care supervision; social care, primary education; fire precautions; maintenance of sports grounds. The tasks of the district are all those which cannot be executed by the communes, for example environmental protection; inspection of the air pollution; expansion of roads; development of the secondary education and professional, etc[9].

In the 19th century the Swiss model was formally created. According to the constitution from 2000, Switzerland is a confederation. This country is divided into 23 cantons, where three of them are divided into „ half cantons" what gives altogether 26 cantons concentrated in 13 regions[10]. In Switzerland communes are an only level of the self-government and they come from commonly managed groups of settlements which created the Swiss confederation. Communes have the great self-reliance, because they perform all local tasks, including giving the citizenship of the commune, which is necessary to apply for the citizenship[11].

From the point of view of the undertaken issues, a function which deserves the particular attention is the order-rationing function, connected with the protection of the public order and the collective security. It is worth mentioning that the primacy of the

[5] J. Srzyp, *Administrative division …*, p. 72.

[6] H. Izdebski, *The History of Administration* 3rd Edition, „Liber", Warszawa 1996, p. 72-73.

[7] . Srzyp, *Administrative division …*,ps. 44.

[8] There are some exceptions from this pat tern because the Land also have the tasks of creating the local government. For example in Hessia the lowest level of local government are districts.

[9] *The local government and the civil service in selected countries. Commune in countries of Western Europe*, edit. J. Jeżewski, „Uniwersyty of Wrocław", Wrocław 1999, p. 253-254.

[10] J. Srzyp, *Administrative division …*, p. 53.

[11] B. Dolnicki, *Models of the local government in Europe and in Poland*, „Publishing House of A. Abramski", Katowice 1994, p. 25.

safety in the activity of bodies of public authority stems from the basic element of the administrative law, i.e. principles of the realization of the common wealth. The common wealth is a notion integrating all people and all values, whose protection is constituted by the law. These values, specified in legal documents, falling within the scope of the widely understood safety, concern the security of the outside state among others, of domestic security of the state, including the public order and safety, the protection of life and health of citizens, guarantees of the freedom of thinking and action of citizens, the protection and using natural reserves of the environment or creating social, economic, scientific and cultural conditions for the development. So in the realization of the mission and goals of security, all the bodies and institutions take place since ensuring the safety and public order is in the area of the task of the public administration. These issues are a subject of the administrative and legal regulation which has the wide technical reach. A part of this regulation are: determining code of conduct concerning the public order and safety; imposing certain behaviors; establishing organs competent in matters from this scope, instruments of their action, etc. They create the administrative and legal regime of providing the appropriate degree of that safety[12]. Also managing in the extraordinary states, often called interchangeably the states of particular hazard to the state security, is included in the area of tasks of the civil service. Therefore, continuing the issues undertaken, one should explain the nature of special states.

Attempting to create a general definition of the term 'extraordinary states', one should pay attention to the following elements. First of all, these are always the states included either in the constitution itself or in everyday acts, or recognized as the institution of the binding common law.

Secondly, implementing any of the special states creates the legal and sociopolitical situation being characterized by a departure from normal rules of functioning of the law, and often also of normal functioning of the political system. Therefore these states must always have exceptional nature and at the same time transitional, extraordinary. They are called extraordinary in order to emphasize their dissimilarity and the departure from normal political-legal order. This is what the uniqueness of special states is all about. In this sense especially an expression "state of emergency" conveys the character of these states correctly.

Thirdly, each of contemporary extraordinary states is some kind of reply to the existing threat to a given good requiring the special and immediate defense or protection, with the help of applying extraordinary means. Applying essential, extraordinary and exceptional means is always dictated by the need to move the real threat away or to counteract its effects. This threat can harm: the highest good of the nation, which is its sovereign national existence; into bases of the national system; into the public peace and the life of citizens; into public or individual possessions; also into bases of economic existence of the nation and the economic existence of the population. It is the character of the endangered public good which has the highest importance for diversifying different forms of special states. What is more, the kind of endangered public good and the cause of this threat point out the selection of extraordinary means, taken with a view to counteracting this threat.

Fourthly, nature of extraordinary states consists of implementing restrictions of laws and civil liberties or their partial or total suspension. Democratic mechanisms of the administration are simultaneously suspended.

12 See: *Administrative Law* edit. M. Wierzbowski, „Law publishing company LexisNexis", Warszawa 2003, p. 567-568.

It results from the essence and the aim of introducing the given state, because the entire sense of introducing it consists in the fact that for redeeming the superior good other good sacrifices itself [13].

In the legislation the typology of states of the particular hazard was made by S. Gebethner[14], who applying the criterion of public good suggested the following division (figure 1):

- *states of the particular hazard of the national sovereignty, the independence and the territorial integrity,* which include all martial laws which are led in relation to conducting the warfare or wars and states associated with preparation for the defense;
- *states of the particular hazard of political institutions and functioning of the constitutional organs of the state.* An example can be the German regulation, which stipulated the threat of permanence or liberation-democratic order of Connections or one of the countries /Gefahr fur den Bestand oder die freiheitliche demokratische Grundordnung des Bundes oder eines Landem/, known as the state of the political domestic crisis;
- *states of the particular hazard whose introduction is aimed at restoring the disturbed order and the public peace, the safety of citizens and the law.* According to S. Gebethner 'the forms of special states, included in this category, are characterized by the fact that they are led in circumstances in which the common, collective distraction of the public order takes place, as a result of which the life and health of citizens and their possessions, as well as the public possessions are exposed to a serious danger'[15];
- *states of the particular hazard introduced on account of the natural disaster.* The difference from the previous category results from the reason of the threat. These reasons include the elements, creating the threat to life, health and possessions, because the threat doesn't result from conflicts or social tensions. The state of a natural disaster usually has the local range, but there are the situations when it spreads through a huge area, and even the whole country, paralyzing the normal life of the population and functioning of the economy. However, this nationwide range does not mean the threat to the state security and its constitutional system.

In certain situations a natural disaster within the reach or statewide effects can jeopardize the correct functioning of national economy and in a serious way disrupt essential mechanisms of satisfying basic needs of the society and its members. Then the state of a natural disaster should be converted into the state of the highest threat to the national economy and the existence of the population. However, the Polish legislation doesn't provide for such kind of the state of the particular hazard.

In the German legislation the state of a natural disaster /Naturkatastrophe/ predicted two possibilities of introducing it. If the state of a natural disaster concerned only one country, then the proclamation was involved in a government of this country. It could call the police and administrative forces of other countries for help, as well as to call for help the army and the federal border guard. However, in the situation in which the state of a natural disaster referred to the large number of countries, the initiative of its proclaiming

[13] See: S. Gebethner, *States of the particular hazard as the institution of the constitutional law*, 'Country and law' 1982, number 8, p. 8-11.

[14] Ibidem, p. 12-15.

[15] Ibidem, p. 9-11.

was the business of a trade union government;

- *distresses of the national economy and vital conditions for the existence of the population.* For the first time that kind of cause of threat was set out in the British act on *a state of emergency* from 1920, where they predicted that a state of emergency could be proclaimed when a direct threat to the entire community becomes known or its any essential parts in the field of the essential living conditions, as a result of disrupting the supply and the distribution of food, water, fuel or light or the functioning of the means of transport.

As a result of historical conditioning of the development of not only social relations, but also the modern constitutionalism, types of extraordinary states in our times are highly diversified. The gradable-ness of discipline which these states involve, lets on one hand for the selection of means suitable for real requirements of a given situation, on the other it enables and makes it easier to get out of the extraordinary states with the severer set of discipline through the states with more lenient discipline. Simultaneously, what needs to be strongly emphasized, it frees the authorities of the state from the compulsion to always reach for ultimate and most drastic agents or apply extraordinary means, disproportionate to the weight and the scale of the existing threat.

Decisions about introducing one form of the extraordinary state, particularly if they concern a state of emergency, aroused and will always arise protests and trigger disputes. It is hard to expect it to be the other way round. All the more protests and disputes are understandable, that goods devoted for saving that superior good, which is the business of the country, always constitute individual civil liberties. From this point of view it is always necessary to aspire to the situation when the selection of means restricting laws of both the freedom of the man and the citizen are as much as possible appropriate and commensurate with the weight and the value of the endangered good, whose protection is ensured by introducing the extraordinary state.

Widely understood extraordinary situations bring the greatest threat to the freedom and human rights, and therefore there is a need for an unusually precise regulation of such situations and their legal consequences in the sphere of businesses of individual subjects. Taking issues of extraordinary states one should start with clarifying the notion „rights and freedom of the man and the citizen", because the knowledge of its meaning is necessary to understand the nature of special states.

Human rights are in our times one of the basic notions used in social and political life. The term 'law' has a lot of meanings . Law is „the whole of regulations, legal norms regulating relationships between people" or „what is entitled to him/her, what is possible to be demanded"[16]. In the first meaning it concerns the law in the objective meaning, in the second one the liberty of the subject. So the liberty of the subject exists only when statutory instruments of its protection were created.[17]

The source of the human rights is not the country and the law system created, but the natural law, according to which the ground for the human rights is the dignity and freedom of a human being. Therefore human rights constitute the minimum of entitlements which are granted to an individual – minimum without which he or she could not take advantage of all the other rights.

Strictly connected terms of 'law' and 'freedom' of a man and a citizen, both in legal acts and beside them, have different meanings, origin and, what follows, the technology of

16 *Small dictionary of the Polish language*, edit. E. Sobol, Warszawa 1994, p. 702.

17 See: *Polish constitutional law*, edit. W. Skrzydło, Lublin 2003, p.159.

construction. Human liberties stem from natural laws, from inborn human qualities like the ability to speak. Therefore the country cannot constitute the human liberty, but it can- and it does-restrict it. Some people, especially Thomism school, assume that the natural laws come from the creator, so they are the result of a manifested law. The liberties are not constituted by the country but they can be accepted, guaranteed and restricted. Contrary to 'liberty', 'laws' are created by the country itself. It determines their scope and catalogue.
In the doctrine of international law of human rights, the term of extraordinary situations is usually interpreted as the state which results from temporary conditions putting the state institutions in the endangered position and this state provokes the state authorities to feel justified in a temporary suspension of applying some rules. In order for the state authorities to *lege artis* use the legal consequences of the occurrence of extraordinary states, the following conditions must be met:

- the danger which stems from extraordinary situations must be direct and real;
- the consequences of this danger must concern the whole country;
- the danger threatens the continuity of the organized life of the society;

the danger is so unique that it cannot be contained with the use of ordinary remedy measures being at the country's disposal, especially including the special restrictions permitted by the law.
Summing up, extraordinary states should be understood as the decisions pointed out in the constitution (rarely in ordinary acts) of the subjects, that is the parliament or head of state, aiming at ensuring the public security, law and order and the appropriate functioning of the economy in case of external or internal threats, on one part or on the whole territory of the country and as the consequence of that there is the restriction or suspension of the human rights and liberties guarantied in the acts[18] and introducing the special way of managing the country. This special way of managing is connected with taking on special entitlements by the head of state, government and the bodies of public authority subject to it.

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[18] See: S. Sagan, *Constitutional law of the Republic of Poland*, Warszawa 2001, p. 251-252.