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Zeszyt Naukowy 5, 258-270

2011

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Abstract: The article presents the concept – a state of emergency, disaster risk, crisis management. The author presents a typology of state approaches a specific threat and the mechanisms used to counteract or prevent the resulting consequences of disasters. The material also presents an attempt to create a framework of legal regulations concerning the constitutional limitations of civil liberties in emergency situations.

Key words: crisis management, a state of emergency, disaster, reducing human rights

Introduction

Poland at the end of the twentieth and the beginning of the twenty-first century is characterized by the rise in social unrest and substantial increase in the appearance of adverse natural phenomena such as torrential, long-lasting rainfalls, floods, hurricanes and twisters. Natural disasters mentioned above have been encountered in the past few years.

Hardly had we recovered from the large flood of 1997, which was described by the specialists as the natural disaster or historic cataclysm which can happen once in 500 years, when four years later Gdańsk was flooded and along Vistula River a huge flood wave came, easily making its way through old, not repaired dykes. Similar situation, on a large scale, took place in 2010. Taught by this experience we should realize that the nature does not like waiting and it can teach us the next lesson of humility to its power and unpredictability.

Most of all, it is a man who is responsible for the occurrence of the

effects of elements' actions[1]. Attitudes of disregarding the safety matters are common not only among the ruling élite, but also the society. We have seen many times how important it is to accurately prepare the country to take action in the case of danger.

Widely understood extraordinary states bring the greatest threats to freedom and liberty of a man and citizen, therefore we need to precisely regulate such states and their legal consequences in the sphere of individual subjects' businesses.

The concept of extraordinary states

While attempting to create a general definition of the term "extraordinary states", we need to consider the following components. First of all, these states are predicted in the constitution itself, in acts and regulations, or recognized as the institution of the binding common law. Secondly, implementing any of special states created legal and sociopolitical situation being characterized by the departure from normal rules of functioning of the law, and, more often than not, of normal functioning of the political system. That is why these states must have exceptional and, at the same time, transitional and extraordinary nature. They are called "special" to stress their uniqueness and departure from political-legal order. That is what the uniqueness of the special states is about. In this sense especially the term "special state" accurately illustrates the nature of these states.

What is more, each of the contemporary special states is a kind of response to the existing threat of the public goods, needing special and immediate defense or protection by means of extraordinary measures. Applying necessary, unusual and special means is always dictated by the need to move the real threat away or to counteract its effects. This danger can be a threat to: the most important goods of the given nation, meaning sovereign national existence; the bases of the national system; public peace

[1] J. Janošec, *Sekuritologie – nauka o bezpečnosti a nabezpečnosti*, „Vojenské rozhledy" 2007, s. 3–14.

and life of the citizens; public or individual possessions; last but not least, bases of the nation's and population's economic existence. It is the nature of the threatened good that is significant to make a difference between different forms of special states. What is more, the kind of the public good being threatened and the reason of this danger indicate which extraordinary means should be applied in order to counteract this threat.

Moreover, the nature of extraordinary states is about implementing restrictions of laws and civil liberties or their partial or total suspension. At the same time, democratic mechanisms of administration are being suspended. It is due to the essence and the purpose of introducing the given state because the whole sense of implementation is the fact that to save the superior good, another one is sacrificed[2].

To conclude, the term "extraordinary state" should be understood as "decisions implemented in constitution (less often in normal acts and regulations) of the subjects, that is the parliament or the head of the country, whose aim is to provide security, public law and order and adequate functioning of the economy in the conditions of outside or inside threats, on one part or on the whole territory of the country, and as a result of which there is limiting or suspending laws guaranteed in acts of basic laws and civil liberties and implementing administration of the country in a special way. This unique way of administering involves accepting special prerogatives by the head of the country, the government and general administrative bodies, military and police organs subordinated to it[3]. At the same time we need to indicate that the term "the events of special risk" is often used alternatively.

In the Polish legislation S. Gebethner[4] made the typology of the events of special risk. Adopting the criterion of public goods, he suggested the

[2] S. Gebethner, *Stany szczególnego zagrożenia jako instytucja prawa konstytucyjnego*, „Państwo i Prawo" 1982, nr 8, s. 8–11.
[3] S. Sagan, *Prawo Konstytucyjne Rzeczypospolitej Polskiej*, Warszawa 2001, s. 251–252.
[4] S. Gebethner, *op.cit.*, s. 12–15.

following division:

- *states of the particular hazard of the national sovereignty, the independence and the territorial integrity,* among which we have all martial laws led in relation to conducting the warfare or wars and states associated with preparing for the defense;
- *states of the particular hazard of political institutions and functioning of constitutional organs of the country.* A good example can be a German regulation which predicts he distress of the permanence or liberation-democratic order of Unions or one of the countries /Gefahr fur den Bestand oder die freiheitliche demokratische Grundordnung des Bundes oder eines Landem/[5], called the state of the political domestic crisis;
- *states of the particular hazard whoseintroduction is aimed at restoring disturbed order and public peace, safety of citizens and law.* According to S. Gebethner „the forms of special states within this category are characterized by the fact that they are implemented in circumstances in which there is the common, collective distraction of public peace and order, as the effect of which life and health of citizens , their private and social goods are exposed to a great danger"[6];
- *states of the particular hazard implemented because of a natural disaster*. The difference between this and the previous category is in the reason of the danger. The reason can be 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 has the local range as a rule, but there are the circumstances when spreads on a large area, not to say the entire country, paralyzing normal life of the population and functioning of the economy. However, this nationwide reach does not mean the threat to the state security and its constitutional system. In certain situations a natural disaster with statewide effects can jeopardize the correct functioning of the national economy

[5] Ustawa Zasadnicza NRF z dnia 24 czerwca 1964 r., art. 87.
[6] S. Gebethner, *op.cit.*, s. 9–11.

and seriously disrupt essential mechanisms of satisfying basic needs of the society and its members[7]. Then the state of a natural disaster should be converted into the state of highest threatening of the national economy and the existence the population. However, in the Polish legislation there is not such a kind of the particular hazard of the state stipulated;

– *distresses of the national economy and vital conditions for existence of the population.* For the first time that kind of the 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 there is a direct threat to the entire community or any essential parts of it in the field of the basic living conditions, as a result of disrupting the supply and distribution of food, water, fuel or light or functioning of means of transport.

As a result of historical conditioning of the development of not only social relations, but also the modern constitutionalism, the kinds of extraordinary states in our times are highly diversified. The gradable ness of discipline, which these states pull behind themselves, lets on one hand to select the means suitable for real requirements in the given situation, and on the other hand makes it possible and easier to get out of extraordinary states with the severe discipline through states of more lenient discipline. At the same time, and it must be remembered, it frees the country authorities from the compulsion to always reach for ultimate and most drastic agents or apply extraordinary means, disproportionate to the weight and scale of existing threat.

Decisions to introduce one of the extraordinary states always have and will lead to protests and cause arguments. It is hard to expect that to be different. All the more protests and disputes are understandable, that goods devoted for saving that superior good, which is the county's business,

[7] L. F. Korzeniowski, *Securitologia. Nauka o bezpieczeństwie człowieka i organizacji społecznych*, EAS, Kraków 2008, s. 17 i n.

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 is as appropriate and commensurate with the weight and the value of the endangered good as possible, which is supposed to be protected by introducing extraordinary state.

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

Human rights in social and political life

As suggested by J. Dworzecki and J. Szymczyk „(…) human rights are in our times one of basic notions used in social and political life"[8]. The term "law" or "right" has a couple of meanings in Polish language. Law are „all the regulations, legal norms regulating relationships between people" or „what is entitled to him/her, what is possible to demand"[9]. In the first meaning law is understood in the objects meaning, in the second one as the liberty of the subject. So liberty of the subject exists only when statutory instruments of its protection were created[10].

The source of the human rights is not the country and the legal system created, but the natural law, according to which the base of human rights is human's dignity and freedom. These values give the human rights particular qualities: universal; individual; one-way; inviolable; inalienable and relative.

[8] J. Dworzecki, J. Szymczyk, *Kryminologia. Wybrane zagadnienia*, Gliwice 2010.
[9] *Mały słownik języka polskiego*, (red.) Sobol E., Warszawa 1994, s. 702.
[10] *Polskie prawo konstytucyjne*, (red.) Skrzydło W., Lublin 2003, s. 159.

Human rights also have basic character[11]. Basic human rights are the most crucial ones from the citizens' point of view, necessary to provide other human rights, concerning the basic aspects of individual's social life, not only as a human, but also as a citizen. Human rights constitute the minimum of entitlements for each individual – minimum, without which they could not exercise all other laws. They are basic also because the country, aspiring for implementations of different socially important aims, cannot omit these laws.

Joined closely to each other notions of „ law" and „ freedom" of the man and the citizen both in legal documents, as well as apart from them, have different meanings, their genesis is different, and, what follows, technique of constructing. Human liberties result from natural laws, from inborn man's features, such as e.g. ability to talk. That is why the country cannot establish the freedom of speech, but it can, and it is does, restrict it. Some, especially Thomism, claim that the natural laws come from the Creator, so they are the result of manifested law. Freedom is not constituted by the country, it can be however recognized, guaranteed or limited by it. Unlike „freedoms", „laws" are created by the country. It determines their scope and the catalogue.

The very date „human rights" came into existence in the Restoration period. For the first time in the legal document it was used in Bill of Rights of Virginia from 1776 and already then included primary laws in relation to country and society[12].

The basic division of human rights is dichotomous. It singles out substantive laws and procedural (trial) ones. Substantive laws are specific laws and freedoms, i.e. everything to what the individual is entitled, e.g. the right to live, the freedom from tortures, the right to personal freedom and security, the right to the reliable process, the right to privacy, the freedom of conscience and faith, freedom of the statement, right to the medical

[11] *Ibidem*, s. 155.
[12] *Słownik wiedzy o Sejmie*, (red.) Preisner A., „Wydawnictwo Sejmowe", Warszawa 2001, s. 129.

attention and so on. Procedural rights are means and ways of enforcing one's rights and freedoms from the country, e.g. right to the court, right to petition and to instanceness. These laws result from the necessity of assuring by the state the possibility to exercise the laws of individual. They are very important, without procedural rights substantive laws would constitute only a theory.

Classical division of human rights based on three categories is also included in the *Constitution of the Republic of Poland of 1997*. It points out the following:

- personal (civil) rights, being the most important ones for the individual, letting them determine their identity;
- political (public) laws admitting citizens to the national, public and social life. Thanks to them the individual can participate in matters concerning the community and can influence the social life;
- social laws consisting of laws: economic and social which guarantee the individual the minimum of economic safety, giving the possibility to survive in the situation when a person alone is not able to take care of oneself.

In the doctrine of international law of human rights comprehending extraordinary situations is usually being interpreted as the state resulting from transitional conditions putting state institutions in endangered position and this state causes the authorities of the country feel justified in the temporary suspension of application of certain principles (so-called derogation). So that the authorities of the state can use lege artis from legal consequences of the appearance of extraordinary situations, the following conditions must be met:

- danger resulting from extraordinary situations must be direct and real;
- effects of this danger must concern the entire nation;
- danger threatens the continuation of the society's organized life;
- danger, is so exceptional that it isn't possible to take control of it with the help of normal remedies being at the country's disposal, especially including those allowed by the law of special restrictions.

Extremely important is the fact that threatening of the country's bodies' interests does not authorize these bodies to "save oneself" by temporarily limiting the freedom and laws of individuals. Institution of the derogation is supposed to serve not the businesses of the country, but the business of the society, and those aims not always must be identical.

The contemporary international law of human rights from the beginning has been using the structure of so-called inviolable laws, that is of laws which even in the most dangerous situation as war or other state of public danger threatening the life of the nation cannot be surrendered for restrictions. Polish constitutional regulation also uses such a category, although it does it differently, depending whether it concerns the martial law, exceptional state or natural disaster[13].

Therefore it is possible to state that very principle of the respect for human rights has the character of absolutely binding norm (*ius cogens*). You can conclude from it that human rights, unconditionally being in force, are laws granted to every man e equally and without discrimination, and without regardless of time, place, age, sex, status civitatis, absolutely fundamental, being located within political and civil laws, and recognized in one's authoritative capacity by the international community of countries as the whole[14].

It is possible to define absolute laws as such which are fundamental and to which you cannot enter any protests. Absoluteness means that some human rights can be opened slightly or limited in the face of such situations as: war, threat to public security, territorial integrity, national security, health, moralities, welfare economics, other special circumstances. Other laws can be mutable only in some exceptions, and the other once cannot be changed at all neither on the account of circumstances, nor the place, subject or time. It means that the protection standard of the last ones is the

[13] Z. Witkowski, *Prawo Konstytucyjne*, Toruń 2000, s. 132–133.
[14] C. Mik, *Imperatywne normy praw człowieka*, „Przegląd Stosunków Międzynarodowych" 1981, nr 5–6 (141–142), s. 40.

highest, what results from their special moral and legal significance[15].

Catalogue of absolute laws in the international law of human rights would be best presented in chronological order. It reflects evolution of views among the international community, both in the universal, as well as the regional dimension connected with the object scope of laws which can to be opened slightly in no circumstances.

Decision art. 15 sec. 2 of European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by 04.11.1950 on the meeting of the Committee of Ministers in Rome, contains the following catalogue of absolute, fundamental laws: right to live (art. 2) except for the cases of death resulting from warfare being in accordance with the law; ban on tortures, of inhuman and humiliating treating (art. 3); the ban on the captivity or serfdoms (art.4) and *nulla poena sine lege, nullum crimen sine lege* oraz zakaz *reformationis in peius, lex retro non agit* (art. 7). These are absolute laws which cannot be rejected by the country even in the case of an outbreak of war or other danger being a threat to the existence of the nation[16].

Decision art. 4 sec. 2 of International Covenant on Civil and Political Rights already contains a little bit wider catalogue of mutual laws, that is: right to live (art. 6); ban on tortures, of cruel, inhuman or humiliating treatment (art. 7); ban on captivity, slavery, a slave trade and the serfdom (art. 8 sec. 1 and 2); ban on the imprisonment for debts (art. 11); *nullum crimen, nulla poena sine lege poenali anteriori, lex retro non agit* (art. 15); right to the legal subjectivity (art. 16) and liberty of the subject to the freedom thought, conscience and religion (art. 18).

Art. 27 sec. 2 of The American Convention on Human Rights, adopted in 22.11.1969 in San Jose, the widest catalogue of imperative laws which contains decisions of the following articles: right to the legal personality (art. 3); right to live (art. 4); right to the humane treatment (art. 5); freedom

[15] T. Jasudowicz, *Prawa człowieka w sytuacjach nadzwyczajnych*, Toruń 1997, s. 42.
[16] A. Beckley, *Prawa człowieka*, Kraków 2002, s. 43.

from the slavery (art. 6); freedom from ex laws fast facto (art. 9); the freedom of conscience and faith (art. 12); laws of the family (art. 17); rights to the name (art. 19); rights of the child (art. 19); rights to citizenship (art. 20); right to the participation in governing (art. 23).

To sum up, the nature of special state consists, among others, in implementing restrictions of rights and freedom of the man and the citizen or their partial or total suspension. Redeeming the superior good by devoting other good deeds is the aim of introducing it, but the selection of means restricting laws and freedom of a man and a citizen should be as much as possible appropriate and commensurate with the weight and value of the endangered good, whose protection is implemented by introducing the extraordinary state. Threatened goods can be the safety or possessions of citizens. What is more, they aren't only these goods whose threat allows to make a decision about proclaiming the special state. The terrorist attack of 11 September 2001 in the USA forced introducing the next premise connected with the threat caused by the terrorist operation.

Conclusion

Even in the most dangerous situation, like the war or other state of public danger threatening the life of the nation, there exist laws and freedoms which cannot in any way be surrendered to restrictions. The Polish constitutional regulation also uses the structure of so-called inviolable laws, but does it differently, depending on the kind of special state. Catalogue of inviolable laws from 1997, included in the Constitution of the Republic of Poland is in accordance with the provisions of international law being in effect in this respect. Moreover, emergency laws issued on its base match the model accepted in European states as well as they let for fast decision making by authorized entities in situations of the threat of the country. Here dividing competence of public authorities appears, what is simultaneously the safeguarding mechanism against the malpractice of the special state by bodies having entitlements in their hands.

Creating frames of regulations on restrictions of constitutional civil liberties in extraordinary situations constitutes the guarantee of the compliance of implemented restrictions with constitutional principles of the democratic law-governed state. The gradable-ness of discipline which these states carry behind themselves, frees the authorities of the state from the compulsion to always reach for ultimate and most drastic agents or applying extraordinary means, disproportionate to weight and scale of the existing threat. Nevertheless, it is not possible to introduce effective actions being aimed at restoring the normal functioning of the country without implementing determined restrictions of rights to both freedom of a man and a citizen. However, it is always necessary to apply the gradableness of discipline principle.

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