

RESTRICTIONS OF FUNDAMENTAL RIGHTS AND FREEDOMS IN THE LIGHT OF THE OF CRISIS MANAGEMENT

INTRODUCTORY REMARKS

The most important task of a democratic state is to provide citizens with the right conditions to protect against potential and real dangers. The fundamental part for the security of each community is a state law, which should shape desirable behavior of individuals and define the tasks of the bodies responsible for the protection of safety¹. The responsibility of the state, including public administration, is to have adequate to the situation of system solutions, applicable law, structures and tools for effective action in crisis situations².

Given the current state of the law, the issue of crisis management in Poland is regulated by the Law of 26 April 2007, crisis management³. This Act shall lay down the system of crisis management⁴ in case of

¹ A. Osierda, *Legal aspects of cooperation of public administration in the field of internal security*, [in:] (ed.) A. Osierda, B. Wisniewski, *Law enforcement cooperation with government administration and local government*, Ed. WAS, Bielsko-Biala, 2008, p. 11

² (Ed.) A. Kurkiewicz, *Crisis management in government, organizational and legal basics*, Warsaw 2008, p. 9

³ Uniform text Dz.U. of 2013. Item. 1166, as amended.

⁴ More information: K. Płonka-Bielenin, *The influence of European Union law on the current shape of the law on crisis management – selected issues* [in:] (ed.) E. Wójcicka, B. Przywora, *Europeanisation of administrative law and public administration*, Ed. Academy of the Jan Długosz, 2016 Czestochowa, pp. 74–75 – The original

threats that needs the specific mechanism of action by the public authorities, as well as by the Force, in Poland⁵ in such situations that fall short of expectations for implement one of the states of emergency⁶, in question in the Article 228, paragraph 1 of the Constitution of the Republic of Poland⁷ (martial law⁸, state of emergency⁹ and a state of natural disaster)¹⁰.

The law on crisis management is intended to strengthening security, mainly by the effectiveness of common action of the public administration, during the crisis situations. The are of security includes both: the protection of life and health of citizens, as well as critical infrastructure protection. The Act is facing, are already laid down has

version of the Act of 26 April 2007. crisis management introduced a universal definition of crisis management, according to which it was the work of public administration which is part of national security, which had to rely on crisis prevention, preparation for taking over control of them through planned activities to respond in the event of emergencies and to restore the infrastructure or the restoration of its original character (art. 2). Indicated definition of crisis management has been changed as a result of the amendment made by the Act of 17 July 2009. amending the act on crisis management. According to the introduced change art. 2 crisis management is defined as an activity of public administration bodies which are part of national security, which relies on crisis prevention, preparation for taking over control of them through planned activities, responding to crisis situations, removing their effects and playing resources and critical infrastructure.

⁵ Form No. 770 – Justification of the draft law on crisis management, the Polish Sejm V term of office, the Prime Minister RM 10-86-06, Warsaw June 27, 2006, p. 1

⁶ P. Florjanowicz-Błachut, P. Mikula, *Regulation of states of emergency in Polish constitutional law* [in:] (ed.) A. Kurkiewicz, *Crisis management in government, organizational and legal basics*, Warsaw 2008, pp. 27 – States of emergency may be implemented in situations of extreme danger to „public order, the security and existence of the state” when they can not be removed or prevented using the usual politico-administrative constitutional means; also L. Garlicki, *Polish constitutional law, the outline of the lecture*, Ed. 7, Warsaw 2003, pp. 421 – The author points out that „the state of emergency is a state in the internal order of the state in which part of the existing constitutional regulations is suspended, and in their place enters adjustment unique”.

⁷ Dz.U. of 1997. No. 78, Item. 483, as amended.

⁸ The Act of 29 August 2002. the state of war and the competence of the Supreme Commander of the Armed Forces and the principles of its subordination to the constitutional authorities of the Republic of Polish – Uniform text Dz.U. of 2014. Pos. 1815

⁹ The Act of 21 June 2002. state of emergency – Uniform text Dz.U. of 2014. Pos. 1191

¹⁰ The Act of 18 April 2002. the state of natural disaster – Uniform text Dz.U. of 2014. Pos. 333; more on the state of emergency: K. Prokop, *United extraordinary in the Polish Constitution of 2 April 1997.*, Białystok 2005.

established specific tasks, especially tasks of public administration¹¹ and the Force¹².

It is important that the legislature reserves the law to the rights and freedoms of the individual just in reference to the states of emergency. It does not introduce the right of such restrictions in the law on crisis management. There is no doubts that in spite of above, such restrictions exist.

GUARANTEES AND RESTRICTIONS OF THE RIGHTS AND FREEDOMS

In the modern world, is founded widely accepted view that regulations defining the legal situation of the individual in the State and society are an essential element of every part in the Constitution. Also important is the fact that „the rights and freedoms protected by the Basic Law were considered by the constitutional lawmaker for fundamental rights”¹³. What is important, just subjective criteria are decide about whether the right or freedom is in the Constitution¹⁴.

In the Polish legal system, legal protection of individual freedom has been displayed in the Basic Law of 2 April 1997. According to the article 5 of the Constitution the Republic of Poland (...) Poland guarantees the freedoms and rights of human and civil rights (...)”¹⁵. De lege lata, this instruction was included to the provisions of the Constitution¹⁵. It is accepted under the doctrine is to provide freedoms and rights of human and civil rights, belongs to public authorities¹⁶.

¹¹ More information on the role of public administration: K. Płonka-Bielenin, *Administrative and legal aspect of crisis management at the province level in emergency situations* [in:] (ed.) Z. Ratajczak, *Entrepreneurship or praise crisis*, Ed. Silesian Higher School of Commerce named W. Korfantego, Katowice 2014, pp. 339–345; K. Płonka-Bielenin, *Outline of the issues of crisis management in the local self-government*, scientific journal of the Faculty of Management GWSH, Selected problems of administrative law and commercial law No. 3, Katowice 2013, pp. 108–110

¹² Form No. 770 – Justification for the project..., p. 1

¹³ K. Eckhardt, A hierarchy of rights and freedoms in the light of the constitutional regulation state of emergency, *Overview of Constitutional Law*, No. 2 (18) / 2014, p. 88

¹⁴ *Ibidem*, p. 88

¹⁵ J. Jaskiernia, State security and protection of the rights and freedoms of individuals – 16.02.2016 r. http://astmaisport.nazwa.pl/jerzyjaskiernia/publikacje/1/j.j.Bezpieczenstwo_panstwa_a_ochrona_praw.pdf (dostęp – 4.10.2016).

¹⁶ Commentary to art. 5 of the Constitution, [in:] (ed.) B. Banaszak, *Constitution of the Polish Republic, Commentary*, Warsaw 2012, Ed. 2, San Legal: 2009.10.21- Legalis

According to the Article 31, paragraph 1, of the Constitution, freedom should be protected. According to the paragraph 2, everyone is required to respect the freedoms and rights of the others¹⁷.

Constitutional legislator is allowed to limit the constitutional rights and freedoms of the individual of the citizens, under certain conditions. According to Article 31, paragraph 3 of the Constitution, the limitations that are mentioned in this article, must not infringe the essence of fundamental rights and freedoms.

There is no doubt that the protection of public safety is the responsibility of each State. Protection of the individual and society from potential threats is essential task of public authorities. Knowing how important it is to keeping the State safe, it is quite simply easier to decide about the restrictions of citizens rights and freedoms. In in event of an emergency, according to article 228, the possibility for the introducing one of the states of emergency, and restrictions of citizens rights. It follows, therefore, that the Constitution distinguishes two different kind of threats. Legal loophole regarding the circumstances of the growing threat that may lead to the introduction of a state of emergency, fills the law on crisis management.

The Basic Law reached is the limit on the states of emergency and the functional rule of law. There is no doubt that a critical situation¹⁸ is different from the states of emergency. The question arises whether it should be classified as functional rule of law. The doctrine noted that there is a problem, which comes down to determining whether a term „critical situation” is one of the conditions for states of emergency. In other words, the question arises whether the Act on Crisis Management does not create a new category of a state for emergency. Answering the question indicated refer to the Constitutional Court’s judgment of 21 April 2009.¹⁹ Which states that the Act of 26 April 2007. crisis management creates a system of crisis management in the event of threats that require specific actions, especially on the part of the public administration and the Armed Forces,

¹⁷ Commentary to art. 31 paragraph. 1 of the Constitution, [in:] (ed.) B. Banaszak, *Constitution of the Polish Republic, Commentary*, Warsaw 2012, Ed. 2, San Legal: 2009.10.21- Legalis

¹⁸ Article 3, point 1 of the Act on crisis management says that the crisis means the „situation affecting negatively the level of safety of people, property of significant size or environment that causes significant restrictions on the operation of the competent authorities of the public administration because of the inadequacy of resources and measures”.

¹⁹ Constitutional Court’s judgment of 21 April 2009, Ref. No. K 50/07 Delivery

in situations which do not satisfy the conditions for the introduction of one of the states of emergency, in which, however, is required now to implement specific mechanisms to ensure effective monitoring of the risks and take action to eliminate or at least reduction. Thus, act on crisis management can replace the regulation of states for emergency and at the same time is an essential element of national security²⁰.

The Basic Law allows for restrictions on the rights and freedoms during the states of emergency, but there is no doubt that such limitations are also based on the law on crisis management. In terms of the Act on crisis management can be stated that there may be restrictions on freedom of movement, freedom to organize and participate in meetings of the peace (Article 57 of the Constitution), personal freedom of citizens, as well as restrictions on the right of property (Article 64, paragraph 3 of the Constitution) and the freedom to conduct a business (Article 22 of the Constitution)²¹.

The crisis management system also includes the private sector. According to the Article 6, paragraph 5 of the Act on crisis management, owners and holders of itself and dependent objects, installations or equipment of critical infrastructure²² have a duty to protect them, in particular by

²⁰ J. Filaber, *Crisis management and human rights and freedoms*, „Wrocław Studies Erazmiańskie” 2010, No 4, p. 253

²¹ More information: *ibidem*, p. 249–265

²² According to the Article 3 point 2 of the Act on crisis management for critical infrastructure should understand „systems and their constituent interconnected functional objects, including building structures, equipment, installations, services essential to the security of the state and its citizens and to ensure the smooth functioning of the public administration as well as institutions and entrepreneurs”. This infrastructure includes such systems as:

- Energy supply, as well as energy resources and fuel,
- Communications systems,
- Systems for data communications networks,
- Financial systems,
- Water supply systems,
- Supplies of food supplies,
- Health systems,
- Transport systems,
- Rescue systems,
- Systems that ensure the continuity of public administration,
- Production systems, storage, storage and use of chemical and radioactive substances, including pipelines hazardous substances.

the preparation and implementation, according to the foreseeable risks, plans for the protection of critical infrastructure and maintain their own backup systems ensuring the safety and supporting the functioning of this infrastructure until its complete restoration. There is no doubt that imposed statutory obligations may potentially restrict the freedom of traders.

According to the Article 25, paragraph 1 of the Act on crisis management, if during the critical situation using the other forces is not possible, then Minister of National Defence, at the request of the governor, may delegate his disposal subdivisions or branches of the Polish Force. Uphold those tasks that are set out in paragraph 2 of that article include: evacuate injured people; isolating the area of occurrence of threats or place of rescue operations; participation in ensuring the operability of communication routes; performing the tasks of hygienic and anti-epidemiological and performing tasks included in the provincial crisis management plan.

The realization of the tasks set in practice, may limit individual rights and freedoms, especially the right to personal liberty evacuees, spices movement, freedom to organize and participate in peaceful assemblies on the routes of communication and evacuation areas. Similar actions in terms of consequences can perform the Fire Brigade. Moreover, according to the Council of Ministers on 4 July 1992. on the scope and mode of exercise of rights by directing the operation of the emergency, directing rescue operations or other rescue operation conducted by fire protection units, is entitled to order: the ban on staying in the area, evacuation of the area covered by these measures and rescue, evacuation property, interruption of communication in land traffic, taking the use of vehicles, technical means and other items, as well as water intakes, extinguishing agents and real estate, the time necessary to conduct rescue operations, work orders partitioning and demolition²³.

Just a few individual rights and freedoms guaranteed in the Constitution are absolute and can not be limited with regard to the scope of protection defined in its provisions. The possibility of interference in the catalog of rights and freedoms have their limits in terms of its breadth and depth. This is demonstrated that the legislature can interfere with all the freedoms and rights that are not defined in the Constitution as absolutely inviolable. A catalog of these rights and freedoms has been indicated in article 233,

²³ Council of Ministers on 4 July 1992. On the scope and mode of exercise of rights by directing the rescue operation, Dz.U. 1992. No. 54, Item. 259.

paragraph 1, of the Constitution²⁴. In addition, the scope of the restrictions should be proportionate to the threat²⁵, due to which the intervention was taken, and may not lead to the destruction of any law limiting the subject²⁶.

CONCLUSION

In the light of the analysis it should be stated that the rights and freedoms guaranteed constitutionally may experience limitations if certain conditions are met. According to the Article 31, paragraph 3 of the Constitution restrictions on the exercise of constitutional freedoms and rights shall lay down the law, just only if it is necessary in a democratic state for the protection of its security or public order, or to protect the environment, health, or the freedoms and rights of others.

In accordance with the rules, Constitution allows for restrictions on the rights and freedoms during the states of emergency, which can be implemented in situations of extreme danger. In contrast, there is no doubt that such limitations are also based on the law on crisis management. This Act provides for a system of crisis management in the event of threats that require specific action by the public authorities, as well as by the Polish Armed Forces in situations that do not meet the prerequisites for the introduction of one of the states of emergency as defined in the Basic Law. In the light of the Act on crisis management may can say, of course, that there may be restrictions that are mentioned in the Constitution, like: Article 57, Article 64, paragraph 3 and Article 22 of These restrictions should be considered rational for the protection of public safety and public order.

²⁴ Article 233, paragraph 1, of the Constitution states that „The statute specifying the scope of limitation of freedom and human and civil rights in times of war and emergency shall not limit the freedoms and rights specified in Article 30 (human dignity), Article 34 and Article 36 (nationality), Article 38 (protection of life), Article 39, Article 40 and Article 41, paragraph 4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions) and Article 48 and Article 72 (family and children)”.

²⁵ More information: J. Oniszczyk, *The Constitution of the Republic of Polish in the jurisprudence of the Constitutional Court*, Ed. Zakamycze 2000, pp. 252–268

²⁶ More information: Limitation of rights and freedoms (art. 31), [in:] (ed.) W. Skrzydło, S. Grabowska, R. Grabowski, *The Constitution of the Republic of Polish, encyclopaedic commentary*, Ed. Oficyna a Wolters Kluwer, Warsaw 2009, p. 312

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STRESZCZENIE

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OGRANICZENIA PRAW I WOLNOŚCI JEDNOSTKI W ASPEKCIE ZARZĄDZANIA KRYZYSOWEGO

Słowa kluczowe: Prawa i wolności jednostki, ograniczenia praw i wolności, zarządzanie kryzysowe

Gwarantowane w Konstytucji RP prawa i wolności jednostki mogą zostać ograniczone, jeżeli zostaną spełnione określone warunki. Stosownie do treści artykułu 31 ust. 3 ustawy zasadniczej ograniczenia w zakresie korzystania z konstytucyjnych wolności i praw mogą być ustanawiane tylko w ustawie i tylko wtedy, gdy są konieczne w demokratycznym państwie dla jego bezpieczeństwa lub porządku publicznego, bądź dla ochrony środowiska, zdrowia i moralności publicznej albo wolności i praw innych osób.

W aktualnym stanie prawnym Konstytucja RP dopuszcza ograniczenia praw i wolności jednostki w czasie trwania stanów nadzwyczajnych, które mogą zostać wprowadzone w sytuacjach szczególnego zagrożenia. Natomiast nie ulega wątpliwości, że takie ograniczenia występują także na podstawie ustawy o zarządzaniu kryzysowym. Ustawa ta określa system zarządzania kryzysowego na wypadek wystąpienia zagrożeń wymagających podjęcia szczególnych działań przez organy administracji publicznej, jak również przez Siły Zbrojne RP, w sytuacjach, które nie spełniają przesłanek do wprowadzenia jednego ze stanów nadzwyczajnych okre-

ślonych w ustawie zasadniczej. Na gruncie powołanej ustawy o zarządzaniu kryzysowym należy stwierdzić, że mogą wystąpić ograniczenia dotyczące wolności poruszania się, wolności organizowania i uczestnictwa w zgromadzeniach pokojowych (art. 57 Konstytucji RP), wolności osobistej obywateli podlegających ewakuacji, jak również ograniczenia prawa własności (art. 64 ust. 3 Konstytucji RP) oraz wolności prowadzenia działalności gospodarczej (art. 22 Konstytucji RP).

SUMMARY

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RESTRICTIONS OF FUNDAMENTAL RIGHTS AND FREEDOMS IN THE LIGHT OF THE OF CRISIS MANAGEMENT

Keywords: Rights and freedoms, limitation of rights and freedoms, crisis management

Guaranteed in the Constitution rights and freedoms may be restricted if certain conditions are met. According to the Article 31, paragraph 3 of the Constitution restrictions on the exercise of constitutional freedoms and rights may be imposed only by statute and only when necessary in a democratic state for the protection of its security or public order, or to protect the environment, health or public morals, or the freedoms and rights of others.

In accordance with the rules, Constitution allows restrictions for the rights and freedoms during the states of emergency, which can be implemented in situations of danger. In contrast, there is no doubt that such limitations are also based on the law on crisis management. This Act provides for a system of crisis management in the event of threats that require specific action by the public authorities, as well as by the Polish Armed Forces in situations that do not meet the prerequisites for the introduction of one of the states of emergency as defined in the Basic Law. On the basis of the Act on crisis management should be stated that there may be restrictions on freedom of movement, that are mentioned in the Constitution, like: in Article 57 of the Constitution, in the Article 64, paragraph 3 and in the Article 22.

NOTA O AUTORZE

Dr nauk prawnych Katarzyna Płonka-Bielenin – absolwentka Uniwersytetu Śląskiego w Katowicach, adiunkt w Górnośląskiej Wyższej Szkole Handlowej im. Wojciecha Korfanteo w Katowicach oraz wykładowca w Państwowej Wyższej Szkole Zawodowej im. rotmistrza Witolda Pileckiego w Oświęcimiu. Członkini Stowarzyszenia Badań nad Źródłami i Funkcjami Prawa „FONTES” w Rzeszowie oraz fundatorka i członkini Fundacji Wsparcie Naukowe Partnerstwa Publiczno-Prywatnego w Katowicach UŚ.

Dotychczasowe publikacje związane są z problematyką statusu administracyjno-prawnego organizacji pożytku publicznego, problematyką zadań administracji publicznej i ustrojem samorządu terytorialnego w Polsce oraz w wybranych państwach UE. Poruszane zagadnienia związane są z partnerstwem publiczno-privatnym oraz zarządzaniem kryzysowym. Autorka monografii: pt. *Status administracyjno-prawny organizacji pożytku publicznego*, wyd. GWSH, Katowice 2010 r.; współautorka komentarza pt. *Partnerstwo publiczno-privatne. Komentarz do ustawy o partnerstwie publiczno-privatnym*, wyd. Difin 2012 r.; współautorka monografii pt. *Model ustroju samorządu gminnego w wybranych krajach europejskich, Prawo samorządu terytorialnego w toku przemian*, Wyd. Difin, Warszawa 2013 r.; *Zlecenie zadań publicznych organizacjom pożytku publicznego – uwagi do dyskusji. Order of public services to public benefit organizations – notes for discussion (w:) Władztwo administracyjne. Administracja publiczna w sferze imperium i w sferze dominium*, pod redakcją J. Łukasiewicza, Rzeszów 2012 r.; autorka wielu artykułów naukowych oraz wielu rozdziałów w monografiach.