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STRUCTURE OF BODIES OF PUBLIC AUTHORITY AND ARRANGEMENT OF THEIR COMPETENCES IN THE STATE OF EMERGENCY IN THE LIGHT OF POLISH CONSTITUTIONAL REGULATIONS

The application of the institution of a state of emergency can cause a change in this normal structure of bodies and in their competencies. This is because the state is faced by tasks that require actions that go beyond this normality. These may consist of: the creation of special bodies competent only for a state of emergency, the abolition or suspension of the operation of certain bodies, the assumption of the competencies of one body by another, changes in the interdependence between bodies, and the expansion of the competencies of state authorities. Some of these changes involve taking over the role of the bodies of public power by the military. The paper presented here is an analysis of Polish constitutional and statutory solutions from the beginning of the twentieth century to the present day in terms of the stability of the structure of the organs of public authority and the arrangement of their competencies after the introduction of a state of emergency. The following constitutional acts and legislation based on them will be analyzed: Constitution of the Republic of Poland of March 17, 1921 (Journal of Laws of the Republic of Poland No. 44,

item 267, as amended); Constitution of the Republic of Poland of April 23, 1935 (Journal of Laws of Republic of Poland № 30, item 227); Constitution of the People's Republic of Poland of July 22, 1952. (Journal of Laws № 33, item 232, as amended); Constitutional Law of February 19, 1947, on the Organization and Scope of Action of the Supreme Bodies of the Republic of Poland (Journal of Laws № 18, item 71, as amended); Constitutional Law of October 17, 1992. on Mutual Relations Between the Legislative and Executive Powers of the Republic of Poland and on Local Self-Government (Dz.U. № 84, item 426, as amended); Constitution of the Republic of Poland of April 2, 1997 (Dz.U. № 78, item 483 as amended). The author proves that the stability of the constitutionally and statutorily defined structure of the bodies of public authority and the arrangement of their competencies is such a precious value for the Polish legislator that in the situation of the occurrence of prerequisites justifying the introduction of a state of emergency, he hardly gives up its protection.

Key words: state of emergency, state apparatus, Polish constitutions.

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СТРУКТУРА ОРГАНІВ ПУБЛІЧНОЇ ВЛАДИ ТА РОЗПОДІЛ ЇХ ПОВНОВАЖЕНЬ В УМОВАХ НАДЗВИЧАЙНОГО СТАНУ У СВІТЛІ ПОЛЬСЬКОГО КОНСТИТУЦІЙНОГО ЗАКОНОДАВСТВА

Застосування інституту надзвичайного стану може спричинити зміну цієї нормальної структури органів та їх компетенції. Це пов'язано з тим, що перед державою постають завдання, які вимагають дій, що

виходять за межі цієї нормальності. Це можуть бути: створення спеціальних органів, компетентних лише в умовах надзвичайного стану, ліквідація або призупинення діяльності певних органів, перебирання повноважень одного органу іншим, зміни у взаємозалежності між органами, розширення компетенції органів державної влади. Деякі з цих змін пов'язані з перебиранням військовиками на себе ролі органів державної влади. Представлена робота є аналізом польських конституційних та законодавчих рішень від початку XX століття до сьогодні з погляду стабільності структури органів публічної влади та розподілу їх повноважень після введення надзвичайного стану. У статті буде проаналізовано такі конституційні акти та законодавство, що на них ґрунтується: Конституція Республіки Польща від 17 березня 1921 року (Законодавчий вісник Республіки Польща № 44, поз. 267, з наступними змінами); Конституція Республіки Польща від 23 квітня 1935 року (Законодавчий вісник Республіки Польща № 30, поз. 227); Конституція Польської Народної Республіки від 22 липня 1952 року. (Законодавчий вісник № 33, поз. 232, з наступними змінами); Конституційний закон від 19 лютого 1947 р. про організацію та сферу діяльності вищих органів влади Республіки Польща (Законодавчий вісник № 18, поз. 71, з наступними змінами); Конституційний закон від 17 жовтня 1992 р. про взаємовідносини між органами влади Республіки Польща про взаємовідносини між законодавчою і виконавчою владою Республіки Польща та про місцеве самоврядування (Dz. U. № 84, поз. 426, з наступними змінами); Конституція Республіки Польща від 2 квітня 1997 р. (Dz. U. № 78, поз. 483, з наступними змінами). Автор доводить, що стабільність конституційно і законодавчо визначеної структури органів публічної влади та розподілу їх компетенції є настільки значною цінністю для польського законодавця, що в ситуації виникнення передумов, які

виправдовують введення надзвичайного стану, він навряд чи відмовляється від її захисту.

Ключові слова: *надзвичайний стан, державний апарат, польські конституції.*

Description of the problem. The unprecedented Russian aggression against Ukraine, the introduction of a state of emergency in Poland in the areas near the border with Belarus in 2021 and the state of disaster during the floods in 2024 prompted me to return to the research issue indicated in the title, which I dealt with at the time when the threat of war seemed very remote and the institution of the state of emergency was described only in a normative and historical perspective.

The concept of the structure of the bodies of public power and the distribution of their competencies, adopted by the legislator, are a fundamental element of the system of the state. When designing institutions at the level of the state as a whole and creating a constitution, the constitutional legislator adopts a certain structure of bodies of power and distributes competencies among them for the sake of the best implementation of the adopted system of values. The application of the institution of a state of emergency can cause a change in this normal structure of bodies and in their competencies. This is because the state is faced with tasks that require actions that go beyond this normality.

Bodies of public authority are both state bodies, i.e. components of the state apparatus, its separate elements, distinguished from others by the scope of their competence, particular structure and mode of operation [11, p. 186], and bodies of local self-government, i.e. bodies with the agency of which the entities of local self-government perform their tasks [1, p. 595]. Changes in the structure of the bodies of public authority and in the arrangement of their powers for the duration of the state of emergency may consist in: creation of special bodies competent only for the state of emergency, abolition or suspension of the

operation of certain bodies, takeover of the competencies of one body by another, change in the interdependence between bodies, as well as expansion of the competencies of state authorities. Some of these changes involve the takeover of the role of public authorities by the military, but after the introduction of a state of emergency there may also occur a reorganization within the «civilian» authorities.

Analysis of recent research and publications. In the last two decades, after a long period of absence of scientific interest, the essence and evolution of the institution of the state of emergency have been competently and comprehensively described both in Polish constitutional law and the comparative legal perspective. It is impossible to list all the contributory studies dealing with this subject matter, so I will limit myself only to selected monographs. These include, among others: Agamben G. *State of Emergency, homo sacer II, 1*, translated by M. Surma-Gawłowska, afterword by G. Jankowicz, P. Mościcki. Kraków, 2008; Brzeziński M. *States of emergency in Polish constitutions*. Warsaw, 2007; Kurzępa E. *States of Emergency in the Polish legal order*. Warsaw, 2017; Mażewski L. *Public security. States of Emergency in the Republic of Poland and the People's Republic of Poland 1918-2009*. Toruń, 2010; Mażewski L. *States of Emergency in Poland in the Years 1918-1989*. Toruń, 2006; Prokop K. *States of Emergency in the Constitution of the Republic of Poland*. Białystok, 2005; Prokop K. *Models of the State of Emergency*. Białystok, 2012; Smaga M. *Public Administration during a Natural Disaster*. Cracow, 2004; Socha R. *States of Special Threat to the State in Polish Legislation*. Bielsko Biała, 2004; Wolpiuk W. J. *The State towards Special Threats*. Warsaw, 2002.

The above-mentioned events and the global pandemic of the COVID-19 infectious disease caused the appearance of studies referring to the systemic practice related to the institution of the state of emergency in the Polish literature, e.g. Bała P., *Constitutional Failure. Regulation of states of emergency*

and similar states in the Constitution of the Republic of Poland of April 2, 1997 and the constitutional practice of fighting the COVID-19/SARS-CoV-2 epidemic, «Constitutional Review». 2020. № 2. P. 68-121; Trociuk S., Rights and Freedoms in a State of Epidemics, Warsaw 2021; Florczak-Wątor M. Constitutional Regulation of States of Emergency in the Light of the Current Practice of Its (Non) Application, «State and Law». 2022. № 10. P. 333-350; Trociuk S., State of Emergency at the Border with Belarus – Legal Consequences, LEX/el. 2021.

Purpose of the study. My intention is to analyze Polish constitutional and statutory solutions from the beginning of the twentieth century to the present time in terms of the stability of the structure of public authorities and the arrangement of their powers after the introduction of a state of emergency.

Essential content of the study. In general, in Polish constitutional law, it is accepted as a rule that public authorities after the introduction of a state of emergency function in the existing structure. There are exceptions to this rule. The constitutions and the laws and ordinances issued on their basis did not and do not provide for the establishment of some special «civilian» body to serve as the center of state leadership during a state of emergency.

The Ordinance of the President of the Republic of Poland of January 16, 1928 on Martial Law (*Journal of Laws of the Republic of Poland*, № 8, item 54) provided for the appointment of special bodies for the duration of the state of emergency, but only to assist the military authorities. Those were as follows: the General Civil Commissar and civilian commissars, acting in matters of «*official relations between the army on the one hand and the civilian population and civil authorities on the other*» (Article 19). The General Civil Commissar was to function under the Commander-in-Chief, while the civilian commissars were to function under the bodies of military authority designated by him. The Commander-in-Chief was to appoint the General Civil Commissar and the civilian commissars in consultation with the Minister of the Interior.

The institution of civilian commissars also appeared later in the Decree of the President of the Republic of Poland of September 1, 1939, on the Exercise of Authority over the Armed Forces, on the Organization of the Chief Military Authorities and on Civilian Commissars – since the Appointment of the Commander-in-Chief (*Journal of Laws* of 1939, № 86, item 543). The decree established the office of the Chief Civilian Commissar, which was carried out - as a special task - by a minister appointed for this purpose by the Prime Minister after consultation with the Commander-in-Chief (Article 12).

In the operational area, the Chief Civil Commissar was vested with the powers of the supreme authorities in the scope of the entire government administration, with the exception of the military administration, the judiciary, the railroads, and the post and telegraphs (Article 13): in matters connecting directly with military operations, as well as in matters related to national defense. In this regard, he had the right to issue ordinances «*in those cases in which, according to applicable laws, this right is vested in the Prime Minister, the Council of Ministers or ministers*» (Article 14). The Chief Civil Commissar could «*remove from duty subordinate state officers – with the exception of voivodes and local government officers active in the operational area, and appoint replacements in their place*» (Article 15). As a general rule, the Chief Civil Commissar was supposed to act on the initiative of the Commander-in-Chief, and only in certain matters on his own initiative, «*with the demands placed upon him by the Commander-in-Chief being binding*» (Art. 16). Civil Commissars were to be established for the cooperation of military commanders designated by the Supreme Commander and the voivodes concerned. They were to be appointed by the Minister of the Interior in consultation with the Commander-in-Chief (Article 19).

More often a Polish legislator has allowed certain competencies to be taken over by some bodies from others, as well as the entry of designated bodies

into areas previously inaccessible to them, rather than the appointment of specific bodies for the duration of a state of emergency.

The takeover of competencies that normally belong to someone else during a state of emergency may result from the occurrence of three main reasons, separately or in combination: first, because certain bodies, especially those of a collegial nature, may face obstacles that prevent them from performing their tasks; second, because it is necessary to concentrate competencies in order to operate more efficiently; third, because bodies entrusted with certain functions related to countering the threat are not fulfilling their tasks.

Assumption of powers occurs when the President is equipped, for the duration of a state of emergency, with special legislative powers exercised in place of parliament. This can be a decisive interference in the basic functions of state bodies, a violation of the principles that stand behind their separation. Among Polish constitutional acts, only two grant the President special lawmaking powers for the duration of a state of emergency – the Constitutional Law of April 23, 1935, (Journal of Laws of the Republic of Poland No. 30, item 227) and the Constitution of the Republic of Poland of April 2, 1997 (*Journal of Laws* № 78, item 483, as amended).

According to the 1935 Constitution, the President, *«as the supreme factor in the State, being the personification of its sovereignty, was given the fullness of state power»* [7, p. 126] therefore, granting him the right to issue decrees during martial law without the authority of the statute with regard to all state legislation with the exception of amending the Constitution, did not violate the idea of the constitutional organization of power. The power of the President fell within the framework of all state functions, and included the legislative function [7, p. 126]. The expansion of the President's legislative powers during martial law was natural in view of the fact that, according to Article 2 Section 4 of the

Constitution, «unified and indivisible state power» was concentrated in his person.

The situation is quite different in light of Article 10 of the 1997 Constitution, which unambiguously places the President among the bodies of the executive power. The equipping of the head of state with the right to issue ordinances with the force of statute in a situation where the Sejm cannot convene during martial law must be considered primarily as a manifestation of the fulfillment of the function of the President as a guarantor of the continuity of state power. The constitutional legislator recognized that preserving the continuity of state power is more valuable than the constitutional division of legislative powers.

Equipping the President with the right to issue ordinances with the force of statute during martial law is a significant violation of the arrangement of powers inherent in a normal state situation resulting from the application of the institution of a state of emergency. A change of a somewhat milder nature is encountered by restricting the principle of collegial action of certain bodies of public authority for the duration of a state of emergency. This occurs when the chairman of a collegial body is authorized to carry out the body's tasks independently, or the body is authorized to act in a reduced composition.

When the Constitution of the People's Republic of Poland was amended in 1983 (the Law of July 20, 1983 amending the Constitution of the People's Republic of Poland – *Journal of Laws* № 39, item 175), the institution of a state of emergency was restored to Polish constitutional law, the power to impose it was given to the Council of State, but «in urgent cases» this could be done by the Chairman of the Council of State (Section 3 of Article 33). The chairman of the collegiate body was thus authorized to act in his stead already at the stage of the decision to apply the state of emergency. This was a competence that was important because it was the Chairman of the Council of State himself who

assessed whether an emergency had occurred [13, s. 176; 6, s. 139; 12, s. 111; 2, s. 150].

The Law of August 29, 2002 on Martial Law and the Powers of the Commander-in-Chief of the Armed Forces and the Principles of his Subordination to the Constitutional Bodies of the Republic of Poland (i.e., *Journal of Laws* 2022, item 2091) stipulates that in the event that the Council of Ministers is unable to meet during martial law, «constitutional powers» are exercised by the Prime Minister (Article 11, Section 2).

The authorization of a specific collegiate body to exercise its powers during a state of emergency in a reduced composition was found only in the 1935 Constitution.

The transfer of certain competencies among public authorities for the duration of a state of emergency may be the result of centralist tendencies to strengthen their vertical subordination and to concentrate powers to manage state affairs. The Constitution of March 17, 1921 (*Journal of Laws* of the Republic of Poland № 44, item 267, as amended) in Article 3 established the principle of broad local self-government. Analyzing the content of the ordinances on martial law and the state of emergency of 1928, it can be noted that, leaving aside the issues of subordination of «civilian» authorities to military authorities, they did not directly interfere with this principle.

The 1935 Constitution did not regulate the organization of government administration, leaving the determination of these matters to the President by decree (Article 74). As for local self-government, the concept characteristic of this fundamental law was to «*infuse local self-government into the system of state administration*» [4, p.192].

Meanwhile, the basic principles on which the construction of the political system of the People's Republic of Poland was based under the Constitution of July 22, 1952 (*Journal of Laws* № 33, item 232; i.e., *Journal of Laws* of 1976, № 7, item 36, as amended) were the principle of unity of state power and the

principle of so-called democratic centralism. Under such conditions, at best it is possible to speak of an intensification of centralization for the duration of a state of emergency, which, in the case of the Decree of December 12, 1981 on Martial Law (*Journal of Laws* № 29, item 154, as amended), was expressed in the granting to higher-level administrative bodies the power to determine the direction and rules of operation of subsidiary bodies [5, p. 78].

The case is quite different in light of the 1997 Constitution and the laws on states of emergency of 2002. This is primarily because the decentralization of public authority and the independence of local government units in the 1997 Constitution have been elevated to the status of the supreme principles of the political system (respectively, Articles 15 Section 1 and 16 Section 2 of the Constitution). The introduction of any of the types of state of emergency provided for in the Constitution may cause a violation of the principle of decentralization of public authority and independence of local government units.

The most drastic violation of these rules consists in the suspension of the bodies of public authority or the suspension of certain of their powers. The reason for suspending the bodies of a municipality, county or voivodship self-government under martial law or state of emergency lies in the absence of effectiveness in performing public tasks or carrying out activities under the martial law or the state of emergency law, respectively (Section 1 of Article 14 of *the Law on Martial Law*, Section 1 of Article 12 of *the Law on State of Emergency* – i.e., *Journal of Laws* 2017, item 1928). The decision on suspension shall be made by the Prime Minister at the request of the appropriate voivode. Suspension takes place until the end of martial law or state of emergency, or for a period determined by the Prime Minister, except that the state of suspension always ceases with the end of the relevant state of emergency (Art. 14 Section 4 of *the Law on Martial Law*, Art. 12 Section 4 of *the Law on State of Emergency*). A government commissioner, who is also appointed by the Prime Minister on the proposal of the voivode, takes over the performance of the tasks

and powers of the suspended bodies (Section 2 of Article 14 of *the Law on Martial Law*, Section 2 of Article 12 of *the Law on State of Emergency*).

During a state of natural disaster, the powers of the voivode, head of county and head of municipality (mayor, city president) related to managing activities carried out to prevent the effects of a natural disaster or their removal may be suspended, when they are incapable of such management or manage them improperly (Section 5 of Article 9, Section 5 of Article 10 and Section 4 of Article 11 of the Law of April 18, 2002 on the State of Natural Disaster – i.e., *Journal of Laws* of 2017, item 1897). The decision to suspend the powers of the voivode is made by the minister in charge of internal affairs or another minister whose scope of action includes preventing or removing the effects of the disaster in question, and the decision to suspend the powers of the head of the municipality (mayor, president of the city) or the head of the district – by the voivode.

The centralization of the activities of the public administration during a state of emergency leads to the hierarchical subordination of bodies, as well as the blurring of distinctions between state and local administration [3, p. 481]. Laws on states of emergency introduce subordination between local self-government bodies and bodies of government administration with regard to tasks related to combating threats that are the cause of the state of emergency [9, p. 117-126]. During martial law, the bodies of government administration and local self-government units are supervised in the execution of defense tasks on a national level by the Minister of National Defense (Art. 12 of *the Law on Martial Law*) and on a voivodship level by the voivode. All organizational units, both governmental and local governmental, operating in the voivodship are subsidiary to the voivode in this regard (Section 2 of Article 13 of *the Law on Martial Law*). He may impose specific tasks on local self-government units and order them to make specific expenditures (Item 6 of Section 2 of Article 13 of *the Law on Martial Law*).

During a state of emergency imposed in an area larger than a voivodship, coordination and control of the activities of the state and local governments is carried out by the Prime Minister, and when a state of emergency is imposed in one voivodship or part thereof – by the voivode (Article 9 of the Law on State of Emergency).

Meanwhile, the minister in charge of internal affairs obtains the right to issue binding orders not only to all bodies of government administration, with the exception of the Council of Ministers and the Prime Minister and Vice-Presidents of the Council of Ministers, but also to units of local government (Section 1 of Article 13 of the Law on the State of Disaster).

The rule is to equip public administration bodies with special lawmaking powers for the duration of a state of emergency. Normally, the legislative activity of public administration bodies in matters of the so-called «general legal order», that is, in matters belonging to the sphere of individual rights and responsibilities, issues of public finances, taxation and the legal situation of social organizations is strictly bound by statutes. This is of great importance in the light of constitutional and praxeological values [10, p. 133-137]. In the situation of a state of emergency, usually the legislature strongly relaxes these strictures, leaving the public administration bodies with much greater freedom to create law.

Conclusion. The analysis carried out in this paper leads to the conclusion that the Polish legislator has not decided so far to deeply interfere in the structure and arrangement of powers of public authorities for the duration of a state of emergency. Structural changes to the state apparatus (excluding situations of replacing «civilian» bodies with the military) were basically not considered at all. The legislature was also reluctant to allow the transfer of powers within the existing structure of bodies. He limited permission for such changes to cases where the body being replaced does not function or is ineffective. Within the existing structure, the state of emergency was supposed

to result in strengthening the vertical subordination of bodies of public administration and equipping them (through the introduction of special categories of legal acts and numerous statutory delegations) with additional competencies that activate only during the state of emergency.

Therefore, it can be concluded that the stability of the constitutionally and statutorily defined structure of public authorities and the arrangement of their competencies is such a precious value for the Polish legislator that in the situation of the occurrence of premises justifying the introduction of a state of emergency, he hardly gives up its protection.

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