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Editorial Words

Dear esteemed readers,

It is my great pleasure to welcome you to the latest edition of ASEJ, the academic journal that brings you the latest research in the fields of law, economics, logistics, finance, psychology, criminology, computer science, and security. This issue features a diverse range of articles from leading experts in these fields, showcasing their latest research and insights into current trends and challenges.

As we continue to face unprecedented challenges and rapidly evolving technological advancements, it is more important than ever to stay up-to-date with the latest research and trends in these fields. This issue of ASEJ offers valuable insights and perspectives that are essential for anyone seeking to stay at the forefront of their respective disciplines.

We would like to take this opportunity to express our sincere gratitude to the authors for their hard work and contributions to the advancement of knowledge. We would also like to acknowledge the invaluable support of the Bielsko-Biala School of Finance and Law for their continued commitment to publishing this journal, which serves as a platform for the exchange of the latest knowledge and insights.

Virtual reality (VR) technology has been advancing at a rapid pace, and with its growth come a range of challenges in various fields, including economics, law, security, and computer science. In the realm of economics, one challenge is determining how to integrate VR technology into existing business models. VR has the potential to revolutionize the way companies conduct business, but it also requires significant investment and infrastructure to do so. Additionally, there are concerns about how VR will impact the job market, as it could potentially eliminate the need for certain types of jobs while creating new ones in the VR industry.

In this issue, we also explore the growing significance of virtual reality in law, economics, finance, and security. As VR technology continues to evolve, it presents both opportunities and challenges in these fields. For example, in economics, VR has the potential to revolutionize the way businesses operate, but it also requires significant investment and infrastructure. In law, the use of VR raises important questions around data protection, privacy, and intellectual property rights. In finance, VR can be used to enhance customer experiences and provide new insights into investment opportunities. In security, VR presents new risks and challenges, such as ensuring the safety of users and protecting sensitive data from cyber threats.

We hope that this issue of ASEJ will prove insightful and informative for our readers, and we look forward to your feedback and contributions in future editions.

Sincerely,

Dr Muhammad Jammal
Editor of the ASEJ, Issue 4, Volume 26, 2022

Draft Law on civil protection and the state of natural disaster – constitutional analysis

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Poland

Abstract— **This article aims to analyse the reforms provided for in the draft Law on civil protection and the state of natural disaster and to assess them in terms of the paradigm of extraordinary measures. The research methodology is based on analysis of the provisions of the Constitution and ordinary statutes and a review of literature, including the historical-descriptive method analysis concerning the documentation of the legislative process. The research leads to a negative assessment of the Draft. The drafters' failures concerning the definiteness of the proposed regulations, blurring the dichotomous division into an extraordinary measure and normal functioning of the State, and excessive interference in the independence of local self-government are revealed.**

Key words: extraordinary measures, state of natural disaster, extra-constitutional extraordinary measures

I. INTRODUCTION

Introduction of an extraordinary measure is a state response to a particular threat where ordinary constitutional measures are insufficient. Extraordinary measure – in singular means only an ideal construct in which all the main problems of extraordinary measures are concentrated. Extraordinary measures, always in plural, are specific legal regulations (Kamprowski 2013; Brzeziński 2007). The Polish Constitution mentions three extraordinary measures – and names them in the title of Chapter XI: martial law, state of emergency and state of natural disaster. The draft Law on civil protection and the state of natural disaster redefines one of the constitutional extraordinary measures – the state of natural disaster – and introduces a new construction of states of the State's preparedness. This text briefly discusses the essence of constitutional extraordinary measures, reviews the fundamental assumptions of the draft Law and assesses them in the light of the Polish extraordinary measures regime.

II. EXTRAORDINARY MEASURE – CHARACTERISTICS

An extraordinary measure is characterized by a certain set of features distinguishing it from normal functioning of the State – the 'ordinary' state. It belongs to national law regulations and constitutes a mechanism for responding to a danger of particular nature; during such state, more profound interference in the sphere of rights and freedoms is permitted; a change takes place in the system of functioning of public authorities, and the measure is temporary. It is an exception to the principle of the normal functioning of the State.

An extraordinary measure as a category of domestic law has two consequences. Firstly, it is a legal state – it must be defined by the provisions of generally applicable law of at least statutory rank. The main structural elements of an extraordinary measure should be found in the constitution as the State's fundamental legal act (Kamprowski R, 2013: 97). In the 1997 Constitution of the Republic of Poland, extraordinary measures are extensively regulated at this basic level. Notably, the legislator adopted the method of an exhaustive catalogue of extraordinary measures (Prokop K, 2021: 157). This means that the legislator may not modify that catalogue by ordinary statutes. This is also confirmed by the Constitutional Tribunal, which explained that the Constitution contains a closed catalogue of extraordinary measures and imposes a prohibition of introducing other extraordinary measures by a statutory act (Judgment of the Constitutional Tribunal of 21 April 2009, K 50/07, OTK ZU No. 4A/2009, item 51). It is also a regime of exceptional character, introduced in lieu of certain ordinary constitutional rules (Garlicki 2022). Secondly, an extraordinary measure as an instrument of domestic law refers to internal State relations (Działocha 2005). This distinguishes the measure from the state of war, which is an institution of international law, and from the time of war, which, moreover, is a state of factual rather than legal nature (Biłgorajski A,

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2013).

An extraordinary measure is intended as a state response to specific threats, the combating of which requires the use of special measures (Garlicki 2022). These threats may be of a different nature, hence the tendency to differentiate the forms of the extraordinary measures – different forms apply to different types of threat, which allows the appropriate measures to be adapted accordingly (Garlicki 2022). From the point of view of the very essence of an extraordinary measure, the relevant factor is not so much the type of threat as its severity. The criterion of special hazard is a manifestation of the the principle of subsidiarity of extraordinary measures. Such threats are at issue the removal of which exceeds the possibilities of ordinary constitutional measures, i.e., means from outside the catalogue restricted for extraordinary measures. However, this does not imply the necessity of prior exhaustion of such ordinary measures, but only that the ordinary measures are insufficient. As K. Prokop points out, it is sometimes inexpedient and unreasonable to use ordinary measures in the first place (2005: 20). In a situation of extreme danger and in a dynamic situation, this may delay more effective action.

One consequence of the necessity to respond to a threat of particular intensity is the modification of instruments of interference in the legal position of the individual, which is a structural feature of an extraordinary measure (Brzeziński M, 2007: 18). During an extraordinary measure, deeper interference in the rights and freedoms of the individual is permissible than during the normal functioning of the State. During such extraordinary measure, certain constitutional regulations are replaced by exceptional regulations. This is precisely the case with a number of provisions concerning limitations to human and civil liberties and rights. The permissibility of deeper interference is expressed at least in the fact that the imposed limitations may compromise the essence of rights and freedoms (Florczak-Wątor M, 2022: 341). This follows from the replacement of the general limitation clause in Article 31(3) of the Polish Constitution with the relevant provisions of Chapter XI. This refers, in particular, to Article 233, setting out the permissible scope of limitations in the legal sphere of individuals, and Article 228, defining the general terms applicable to extraordinary measures. During an extraordinary measure, it is even possible to temporarily suspend certain freedoms and rights (Biłgorajski A, 2013).

Another characteristic feature is change in the functioning of public authorities. It should be emphasized that the Constitution of the Republic of Poland mentions a change in operation, not a structural change in the system of public authorities (Biłgorajski A, 2013). Extraordinary measure is sometimes referred to as a time of the executive as it implies a concentration of power in the hands of the executive branch. This construction is justified by the fact that such bodies have more effective means at their disposal to combat the crisis (Prokop K, 2005: 140-141.). Concentration of power permits a faster decision-making process and prevents situations of blocking action in a crisis situation due to the inability of the collegiate parliamentary bodies to assemble. At this point, another feature of an extraordinary measure should be mentioned, whose extent, however, is limited. Namely, a change in law-making is possible – a possibility arises to adopt emergency legislation. Due to the potential impediments to the assembly of collegiate bodies, such as the parliament, during an extraordinary measure it is permissible, to a certain extent, that executive organs adopt legislation of statutory rank. De lege lata, this is only possible during the time of martial law if the Sejm cannot convene. In such a situation, the President of the Republic of Poland may, upon request of the Council of Ministers, issue statutory instruments within the subject boundaries set by the Constitution. As guarantee mechanisms, the requirement of cooperation between both segments of the executive and parliamentary control are used – such instruments, under Article 234 of the Constitution of the Republic of Poland, must be approved by the Sejm at its next session.

Moreover, an extraordinary measure is temporary – it is not intended to be permanent. By its very design, its purpose is to lead to elimination of the threat. This is, above all, a guarantee for the preservation of the constitutional order. Its temporary nature means that it is to last as long as necessary, according to the principle of proportionality laid down in Article 228(5) of the Polish Constitution.

The 1997 Constitution of the Republic of Poland defines only the construction of extraordinary measures without defining or even naming the opposite ‘normal’ state. It does, however, indicate in Article 228(5) that actions undertaken as a result of introducing any extraordinary measure must be intended to achieve the swiftest restoration of conditions allowing for the normal functioning of the State. From this provision, a certain distinction can be inferred between an extraordinary measure and normal operation of the State, namely that the restoration of the latter is the main objective of an extraordinary measure. In the opinion of the author of this study, normal functioning of the State means a certain state in which there are no threats that would necessitate resort to measures of extraordinary nature. As K. Prokop points out, ordinary constitutional measures are all legal norms that can be construed from constitutional provisions outside Chapter XI and from relevant laws (2005: 19-20). These measures are not typical of any special states. As already mentioned, the extraordinary measures regime introduces an exception to the principle of normal functioning of the State.

In consequence, the following features characterize the normal functioning of the State. As regards interference with individual rights and freedoms, Article 31(3) of the Constitution of the Republic of Poland principally applies with all its consequences, the State acts within the constitutional framework of operation of public authorities, and this is a permanent state. The normal functioning of the State is a rule, while an extraordinary measure is an exception. In other words, in the realities of normal functioning of the State, one cannot resort to extraordinary measures, only to ordinary ones.

III. DICHOTOMOUS DIVISION OF THE STATES OF STATE OPERATION

The essence of an extraordinary measure is that it constitutes an emergency regime superseding the 'normal' one. Upon introduction of an extraordinary measure, a temporary suspension takes place of certain constitutional rules normally applicable in the 'normal situation' (Wojtyczek 1999). In the 1997 Constitution of the Republic of Poland, the exception to the principle of the normal functioning of the State is highlighted by the placement of the extraordinary measures regime in a separate chapter. Consequently, this construction can be treated as *lex specialis* in relation to the remaining constitutional norms. In this way, the norms of Chapter XI of the Polish Constitution constituting a special regulation will preclude the application of the remaining norms under the principle of *lex specialis derogat legi generali*. To reconstruct this relationship, one should refer to specific provisions. Thus, Article 233(2) imposing a prohibition to limit the freedoms and rights of persons and citizens only on grounds of race, gender, language, faith or lack of it, social origin, ancestry or property (referred to as the prohibition of discrimination), in a period of martial law or state of emergency, will preclude as special regulation the application of Article 32(2) – the prohibition of discrimination for any reason whatsoever (Steinborn S, 2016: 1632.). This also means that, as a rule, Article 31(3) of the Constitution does not apply to restrictions on rights and freedoms imposed during a state of emergency. A different position is taken by Wyrzykowski (1998). This provision will, however, apply to the restrictions of rights and freedoms referred to in Article 233(1), which contains a catalogue of constitutional freedoms and rights that shall not be limited even in times of martial law or state of emergency (Steinborn S, 2016: 1631). Indeed, the expression "shall not limit" should refer not to the prohibition of any restrictions but to restrictions typical of extraordinary measures, i.e., violating the essence of these rights and freedoms or temporarily suspending them.

It follows from the above that the legislator clearly distinguishes between extraordinary measures and normal functioning of the State. The Constitutional Court's case-law also confirms such understanding of the discussed construction. For example, in case K 50/07, the Tribunal held that the Constitution sets the boundaries between an extraordinary measure (Article 228 of the Constitution) and 'normal' functioning of the State (Judgment of the Constitutional Tribunal of 21 April 2009, K 50/07, OTK ZU No. 4A/2009, item 51). This is, therefore, a dichotomous division. The Court moves on to explain that "the Constitution distinguishes only between ordinary threats and special threats to the State and its citizens. On the other hand, it does not contain provisions allowing to distinguish a peculiar state of increasing threat ('crisis situation') located somewhere between ordinary threats to the security of the state and its citizens (for the elimination or mitigation of which ordinary constitutional measures are sufficient) and special threats justifying the introduction of one of the extraordinary measures" (Judgment of the Constitutional Tribunal of 21 April 2009, K 50/07, OTK ZU No. 4A/2009, item 51). This position is consistent with the argumentation deployed by the Public Prosecutor General in this particular case, who pointed out that "the Constitution does not introduce any intermediate state, and only delimits the boundaries between an 'extraordinary measure' and 'normal functioning of the State'" (Judgment of the Constitutional Tribunal of 21 April 2009, K 50/07, OTK ZU No. 4A/2009, item 51). Therefore, a dichotomous division is a characteristic feature of the Polish extraordinary measures regime: wither extraordinary measures or normal functioning of the State (Prokop 2021). And nothing is left in between.

Also, the Venice Commission pointed to this dichotomy in its report of 26 May 2020. The Commission stressed that the idea of a state of emergency implies a dichotomy between normalcy and exception. (Respect for democracy, human rights and the rule of law during states of emergency – Reflections). The cited report was prepared during the COVID-19 pandemic. Although the coronavirus pandemic in Poland was not a basis for introducing an extraordinary measure, the report provided valuable guidance in the context of the rule of law and human rights during such states. The recommendations addressed specifically the problem of holding elections during the COVID-19 crisis, including during a state of emergency and other extraordinary measures. It should be recalled here that, under the Constitution of the Republic of Poland, the term of office of the Sejm may not be shortened, a nationwide referendum may not be held, nor elections to the Sejm, Senate, local government, Presidential elections – during the period of the introduced extraordinary measure and within 90 days after its termination. Instead, the terms of office of such authorities are appropriately prolonged. Elections to local government bodies are admissible only in such places where an extraordinary measure has not been introduced. (Article 228(7)). This is in line with the position of the Venice Commission, which indicated that "the postponement of elections can lead to a more thorough debate necessary to have free and fair elections later" (Respect for democracy, human rights and the rule of law during states of emergency – Reflections,). At the same time, the construction of an extraordinary measure presupposes its temporal nature; in case of a state of emergency, the Constitution clearly indicates its maximum duration (150 days), while in case of other extraordinary measures, the temporary nature follows from their essence. Thus, neither a permanent extraordinary measure nor an excessively prolonged one is permissible. Under the Polish Constitution, elections should not be unduly postponed, which the Commission has identified as a potential negative phenomenon (Respect for democracy, human rights and the rule of law during states of emergency – Reflections)

Adoption by the legislator of the legal framework of states of the State's functioning based on a dichotomy was a deliberate move. This is manifest in the placement of matters relating to extraordinary measures in a separate Chapter of the Constitution – it was to emphasize that the discussed institution is exceptional. Such separation and clear demarcation is important from the point of view of legal certainty and guarantees of respecting constitutional freedoms and rights. The difference of regimes of limiting such freedoms and rights

require that their subjects know which of the two states (either normal functioning of the State or extraordinary measure) is in force at a given moment. Creating situations of indirect nature poses a risk of undermining the guarantees for the protection of freedoms and rights. Indeed, an extraordinary measure is intended to protect restricted freedoms and rights by providing the rules for imposing restrictions under a clear and predetermined legal framework.

IV. STATE OF ALERT AND STATE OF DANGER AS EXTRA-CONSTITUTIONAL EXTRAORDINARY MEASURES

It follows from the above considerations that there is a prohibition of introducing new types of extraordinary measures by ordinary legislation. This is because the legislator listed such measures exhaustively in the Constitution. In Polish doctrine, authors sometimes point to the possibility open to the Parliament to introduce new extraordinary measures falling within the scope of 'ordinary constitutional measures' within the meaning of Article 228(1) of the Constitution (i.e. not having *de facto* the features of extraordinary measure as indicated at the outset), provided that it does not circumvent the Constitution (Florczak-Wątor 2022).

Difficulties arise principally in the context of qualifying specific legal constructions. Such examples have already appeared, particularly in the context of pandemic legislation and amendments to the Law on state border (after the end of the state of emergency). Also, the draft Law on civil protection and the state of natural disaster discussed in this article seems to be a part of this trend blurring the boundaries between extraordinary measures and normal functioning of the State.

The proposed Law on civil protection and the state of natural disaster (Council of Ministers Legislative Work List no: UD432) would introduce two new 'states of the State's preparedness' – state of alert (stan pogotowia) and state of danger (stan zagrożenia). The draft also provides for the repeal of the existing the Law on the state of natural disaster of 18 April 2002 (Journal of Laws 2017, item 1897) and the Law on crisis management of 26 April 2007 (Journal of Laws 2022, item 261, as amended). A state of natural disaster would, thus, be regulated jointly with the new 'states of the State's preparedness' in a single act. The drafters justify such measure with the desire to maintain consistency and transparency of the State's actions, which seems to be a misplaced argumentation. It should be noted here that the Constitution itself, in Article 228(3), requires adoption of laws defining the terms of operation of public authorities and the extent to which human and civil liberties and rights may be restricted in times of extraordinary measures. In doing so, the Constitution does not prejudge if this is supposed to be one statute regulating the relevant issues for all extraordinary measures or three statutes – a separate one for each extraordinary measure. The legislator has chosen the latter solution, and there are now three statutes on specific extraordinary measures and a fourth one on the terms of compensating property losses resulting from the restriction of human and civil liberties and rights during an extraordinary measure. It seems that while a combination of rules on various extraordinary measures in one act is permissible, a combination of rules on extraordinary measures and constructions governing normal operation of the State may be found problematic from the constitutional perspective. This could give rise to interpretational ambiguities and further blur the boundary between the two different legal regimes.

The draft also provides for the repeal of the Crisis Management Act. The rationale behind such decision is to reduce the number of legal acts governing the same or substantively similar matters. It is not easy to agree with this line of argumentation as this comes at the expense of the clarity of regulation. The drafters seem to have overlooked the essence of the difference between extraordinary measures and normal legal measures (ordinary constitutional measures), using phrases such as "application of extraordinary tools" in the context of crisis management. The concept behind the new regulation assumes a mechanism of transition stages from the normal condition to an extraordinary measure, a certain gradation of crises and powers of state authorities adjusted adequately to the level of threat, i.e. respectively: state of alert, state of danger and state of natural disaster. The lack of connection between extraordinary measures and crisis management is presented in the draft as a shortcoming of the current legislative framework. However, there is no obstacle to using crisis management instruments during an extraordinary measure. At present, the lack of connection between these mechanisms is due to a different approach – not as another stage in the growing of an emergency but as two states of a different nature.

The draft law may also be criticised for the lack of a constitutionally required level of definiteness. This principle, which is a component of the principle of a democratic state ruled by law under the case-law of the Constitutional Tribunal, includes "the requirement of definiteness of legal provisions, which must be formulated in a correct, precise and clear manner", and "this standard is required in particular when it comes to the protection of rights and freedoms" (Judgment of the Constitutional Tribunal of 11 January 2000, K 7/99, OTK ZU No. 1/2000, item 2). The draft Law in question indeed touches upon the issue of interference in the sphere of constitutional rights and freedoms, which is why precision of the constructed definitions of the new states of the State's preparedness is particularly important. Also, in the already cited case K 50/07, the lack of sufficient specificity of legal provisions was the basis for declaring them unconstitutional. As in the project under discussion, the allegation of indefiniteness related to a definition (in that particular case of a 'crisis situation').

The rationale for introducing the two 'intermediate' states is vague and open-ended. This allows for a high degree of discretion in their introduction. Especially in the case of a state of danger, as the one providing for more far-reaching restrictions, this poses a potential threat to the protection of freedoms and rights, as well as to the self-governance of local authorities. According to the draft, a state of alert could be introduced "if, due to unfavourable circumstances caused by acts of nature or human activity, including the occurrence or

possibility of a crisis situation in a specific area, it is necessary to raise the readiness of public administration bodies to perform tasks in the field of civil protection" (Art. 27(1)(1) of the draft), and a state of danger "if the introduction of a state of alert is insufficient to perform civil protection tasks, and it is necessary for public administration bodies to take additional measures and introduce restrictions, prohibitions and orders binding on civil protection actors" (Art. 27(1)(2) of the draft). Attention is drawn to the vagueness of the notion of 'adverse circumstances', as well as the emphasis on the insufficiency of the state of alert (milder measure), which in turn is reminiscent of a phrase characteristic of the prerequisites of a constitutional extraordinary measure, where the insufficiency of ordinary constitutional measures is also referred to.

The method of introducing these new states also appears to mimic the method specific to extraordinary measures – a regulation. The drafter, in this context, treats the proposed new 'states of the State's preparedness' similarly to extraordinary measures. Terms such as "extraordinary tools" ("narzędzia ekstraordynaryjne") (Explanatory Memorandum, Annex to the draft, p. 2.) or 'emergency situation' (Regulatory Impact Assessment, Annex to the Draft) are used in reference to those new states. An approach different from the existing one is also apparent in the context of regarding 'states of the State's preparedness' as transition stages from a normal state to extraordinary measures. However, for such non-constitutional extraordinary measures, the form of regulation is not entirely appropriate. It is argued that it may significantly impede judicial review of the relevant legislative act (Izdebski 2022) Moreover, the authorizations to issue such regulations are blanket in nature – and therefore incompatible with the norms under Article 2 and Article 92(1) of the Constitution of the Republic of Poland (Izdebski 2022) (batory.org.pl).

It should also be mentioned that the legislator sets out in a single provision the prerequisites for introducing both the new states of alert and danger and the constitutional state of natural disaster, which is not conducive to a clear distinction between these institutions. In the latter case, the Government Legislation Centre has already submitted comments on the wording of the provision of Article 27(1)(3) of the draft, in which the purpose of introducing a state of natural disaster is defined in a manner inconsistent with Article 232 of the Polish Constitution (Comments of the Government Legislation Centre, p. 4.). This is because the draft contains the phrase "In order to ensure that the tasks of civil protection are carried out adequately to the threats", whereas the Constitution, in Article 232, provides for an introduction of a state of natural disaster "in order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster".

In addition, the statute provides for a specific constriction of "orders". This construction, as indicated by the drafter, was based on the experience gained during the COVID-19 pandemic, when legal and functional constraints appeared in the implementation of an effective fight against coronavirus, and the possibility of issuing orders by civil protection authorities in a situation of extraordinary emergency was modelled on the solutions adopted in the special COVID Law (Explanatory Memorandum of the bill, p. 9-10). Again, extraordinary threats were invoked, and the drafters saw nothing inappropriate in justifying such extraordinary circumstances as a reason for using measures of exceptional nature while formally maintaining normal operation of the State. The proposed orders construction is broader and more severe than the one envisaged under the currently adopted legislation on the state of natural disaster, and according to the draft it is also supposed to apply during a state of danger. Presently, Article 13 of the Law on the state of natural disaster (Journal of Laws 2017, item 1897) provides a legal basis for issuing binding orders, however, these are addressed to bodies of government administration and local government authorities, and not to entrepreneurs. According to Article 31 of the draft, the Prime Minister may issue binding orders to government administration bodies, state legal persons, local government bodies, local government legal persons and local government organisational units without legal personality and to entrepreneurs. Such powers are also to be given to the appropriate minister and to voivodes, the latter with the exception of issuing orders to entrepreneurs.

Moreover, in the event of a refusal to carry out an order, inadequate execution of the order or ineffectiveness in the implementation of coordination measures by a local government body, the Prime Minister may rule that the tasks of the local government body are to be taken over by the voivode. Admittedly, this is only permissible for a limited period and "to the extent necessary for the execution of the order or implementation of the coordination tasks". However, some problems can be seen here. Namely, the prerequisites are defined very broadly, which opens up room for abuses. Terms such as "ineffectiveness in the execution of coordination activities" or "inadequate execution of the order" raise doubts. This already seems to involve the criterion of reliability, whereas the Constitution mentions only the criterion of legality as a permissible benchmark for the supervision of local government units. In this case, the possibility of taking over tasks indicates precisely supervision, not merely control. These doubts arise from the extension of this type of measure to a state of danger, i.e. formally falling within normal functioning of the State. Admittedly, the interference in the self-government's independence is lesser than under the previous unofficial draft, which provided for the possibility to suspend a self-government body and establish a government commissioner (Izdebski 2022) (batory.org.pl), however, it still remains significant. The form in which the takeover of tasks of the self-government is to take place – administrative decision subject to immediate execution – also attracts attention. The proceedings themselves are one-instance (a departure from the two-instance principle). The institution of orders in this form does not meet the constitutional requirement of proportionality.

The draft also provides for another category of orders – those imposed by services (Police officers, Border Guard officers, State Fire Department officers or a soldier of the Armed Forces of the Republic of Poland) on 'persons' (Article 32 of the draft). It is not specified in the draft exactly what persons are meant. This construction allows such orders to be directed both to

natural and legal persons, without limitation. The current Law on the state of natural disaster lacks an analogous solution and the possibility of imposing obligations on private entities (natural and legal persons, entrepreneurs) is defined by enumeration of permissible restrictions or obligations. Moreover, the application of this type of interference is expressly limited only to natural persons residing or temporarily residing in the area where the state of disaster is in force, and in the case of legal persons and organisational units without legal personality - those having their registered office or conducting their activity in the area (Article 20 of the Law on the state of natural disaster, Journal of Laws of 2017, item 1897).

Finally, mention should be made of that part of the proposed regulation which directly affects one of the constitutional extraordinary measures – the state of natural disaster. In general, the Law on compensating property losses resulting from limitation of rights and freedoms is to be repealed, however, only with regard to the state of natural disaster. In reference to the other two constitutional extraordinary measures, it will still remain in force. Although under Article 228(4) of the Polish Constitution, the question of adopting a statute specifying the grounds, scope and procedure for the compensation of such losses is optional, it may be highly questionable to dispense with it since the statute has already been enacted. All the more that this applies only to a part of the constitutional extraordinary measures, thus causing an incomprehensible differentiation in compensation matters.

As regards the state of natural disaster, the proposed statute is mostly a repetition of the provisions of the currently binding Law. However, it is impossible not to mention several failures of the drafters. These include the imprecise definition of the procedure for lifting the state. Currently, Article 6.2 of the Act expressly indicates the competent body (the Council of Ministers) and the form (regulation), while the wording of the draft is limited to a short "shall be lifted". The draft also disregards the issue of prolonging the state of natural disaster (this matter is regulated in the current Act). Attention should also be paid to an omission to designate the body coordinating actions carried out to prevent or remove the effects of a natural disaster in the event of a state of natural disaster introduced in a single commune (Article 35 of the draft). It is difficult to assess whether this is an oversight on the part of the drafters or a deliberate omission to assign these competencies to a self-governing body. Under the current Law, the body in charge of such actions at this level is the head of the commune or mayor (Art. 8(1) of the Law on state of natural disaster). At the poviat and voivodship level, the competent authorities are the starost and the voivode respectively. Attention should be drawn to the repetition of a loophole from the current Law, which had been reported by the doctrine (Kurzępa 2017). The loophole consists in the lack of indication of the competent authority to introduce restrictions on human and civil liberties and rights in case of a state of natural disaster in force in more than one voivodeship. Under the current law, in such a case, Article 23(1) refers to Article 8 regarding the scope of competence. Still, it does not indicate the minister as competent to introduce restrictions, although this is the authority competent to direct the actions carried out to prevent or remove the effects of the disaster. The list of authorities competent to impose such restrictions is exhaustive. It includes only the head of the commune (mayor), the starost and voivode – the last one if the state of natural disaster has been introduced in more than one county within a voivodship. Therefore, declaring a state of natural disaster in an area exceeding one voivodeship may lead to difficulties in determining the authority competent to implement such restrictions and to a decision-making paralysis (Kurzępa 2017). The draft Law does not address the issue appropriately. It only identifies the starost and the voivode as the competent authorities to introduce the relevant restrictions, referring to Article 34 as regards the scope of competence. It should be noted that this is probably an editorial error, and the reference should be made to Article 35, which has an analogous meaning to the current Article 8 of the Law. Article 34 of the draft, on the other hand, deals with issues relating to the introduction of the state of natural disaster itself and does not relate to the competencies of the bodies mentioned in the referring provision. The discussed provision also does not mention the head of the commune (mayor), although this body is indicated as a civil protection authority.

V. CONCLUSIONS

In the light of the case-law of the Constitutional Tribunal, the 'states of increasing emergency' proposed in the draft law under review, especially the state of danger, are at least a constitutionally impermissible, intermediate condition between the normal functioning of the State and a constitutional extraordinary measure. This is evidenced by such features as reaction to certain specific threats, the possibility of using "extraordinary tools" as mentioned by the legislator (institution of orders and interference with freedoms and rights) and the concentration of power in the hands of governmental administration (the possibility of taking over the tasks of self-government). What distinguishes this institution from constitutional extraordinary measures is the lack of constitutional limitations as formally these remain 'ordinary constitutional measures'. These limitations indicated by the Constitution include, in the first place, the prohibition of shortening the term of the Sejm, holding general elections or nationwide referenda during an extraordinary measure and within 90 days after its termination. This restriction is of constitutional rank and it is based on Article 228(7) of the Polish Constitution. This mechanism is intended to ensure proper conduct of elections and equal access to ballot for voters, which could be disrupted during extraordinary measures. However, it carries a certain risk of abuse and manipulation of the electoral timetable, as there are no mechanisms to protect against such abuse (Prokop 2005). The second constitutional safeguard is petrification of the Constitution, the Laws on the elections to the Sejm, the Senate and local government bodies, the Law on presidential elections, as well as statutes on extraordinary measures. This restriction was intended to safeguard the political system against changes in the method of

appointing bodies elected by popular vote (Prokop 2005). It also guarantees that key rules remain unchanged during the extraordinary measure by petrifying the statutes concerning such measure. This guarantees the immutability of the rules concerning the extraordinary measure throughout its duration and strengthens the legal position of the individual. This is important because of the possibility of deeper interference in the sphere of constitutional rights and freedoms; a possibility of changing the scope of their limitations during the extraordinary measure would negatively affect legal certainty. Finally, the prohibition of amending the Constitution itself is intended to protect against a permanent change of the system in a situation of uncertainty and danger, such as duration of an extraordinary measure.

The draft in its current form deserves criticism. The idea of stages of increasing threats and the blurring of the dichotomous constitutional division between the time of normal functioning of the State and an extraordinary measure should be assessed negatively. This is intended to provide emergency tools to the authorities, however, outside the constitutional limitations inherent to the institution of extraordinary measure. There is also an apparent tendency to limit the local government's role and restrict its leeway in civil protection activities. Also, civil liberties and rights are affected by the institution of orders to entrepreneurs and natural persons. Another significant change is exclusion of compensation mechanisms in relation to a constitutional extraordinary measure – the state of natural disaster – and, in case of the newly proposed states of alert and danger, omission of this issue already at the legislative stage. The question of elections cannot be overlooked either. The proposed regime would allow to influence the electoral calendar and to circumvent the constitutional prohibition of holding elections – either by introducing a constitutional extraordinary measure when it is desirable to postpone elections or an extra-constitutional extraordinary measure in an opposite situation. Finally, the problem of the lack of definiteness of the proposed legislation should be stressed once again – its vagueness and largely discretionary criteria, both with regard to the rationale for introducing new 'extra-constitutional extraordinary measures' and the prerequisites of taking over local government tasks.

VI. References

Biłgorajski A., (2013). Stany nadzwyczajne. In: Małajny R. M. (ed.) Polskie prawo konstytucyjne na tle porównawczym. Warszawa: Wydawnictwo C.H.Beck, pp. 719-747.

Brzeziński M., (2007). Stany nadzwyczajne w polskich konstytucjach. Warszawa: Wydawnictwo Sejmowe.

Działocha K., (2005.) Komentarz do rozdziału XI. In: Garlicki L (ed.) Konstytucja Rzeczypospolitej Polskiej. Komentarz, tom IV. Warszawa: Wydawnictwo Sejmowe.

Florczak-Wątor M., (2022). Konstytucyjna regulacja stanów nadzwyczajnych w świetle dotychczasowej praktyki jej (nie)stosowania. Państwo i Prawo 920(10), pp. 333-350.

Garlicki L., (2022). Polskie prawo konstytucyjne. Zarys wykładu. Warszawa: Wolters Kluwer.

Izdebski H., (2022). Projekt ustawy o ochronie ludności oraz o stanie klęski żywiołowej – uporządkowanie stanu prawnego czy kontynuacja zmiany ustroju bez zmiany Konstytucji?. Available at: https://www.batory.org.pl/wp-content/uploads/2022/05/Projekt_ustawy-o-ochronie-ludnosci.pdf (accessed: 22 November 2022)

Kamprowski R., (2013). Extraordinary measures in Central and Central-Eastern European States. Constitutional solutions in the selected countries. HASSACC 2013.

Kurzępa E.,(2017). Stany nadzwyczajne w polskim porządku prawnym. Warszawa: Poltext.

Prokop K.,(2005).Stany nadzwyczajne w Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. Białystok: Temida 2.

Prokop K.,(2021). Konstytucyjna regulacja stanów nadzwyczajnych w Polsce. In: Granat M. (ed.) Sądownictwo konstytucyjne. Teoria i praktyka t. IV. Warszawa: Wydawnictwo Naukowe UKSW, pp. 153-175.

Steinborn S., (2016). Komentarz do art. 233. In: Safjan M., Bosek L., (eds.) Konstytucja RP. Tom II. Komentarz do art. 87–243, Warszawa: Wydawnictwo C.H.Beck, pp. 1629-1633.

Wojtyczek K., (1999). Granice ingerencji ustawodawcy w sferę praw człowieka w Konstytucji RP, Kraków: Kantor Wydawniczy Zakamycze.

Wyrzykowski M., (1998). Granice praw i wolności – granice władzy. In: Oliwa-Radzikowska B. (ed.) Obywatel – jego wolności i prawa: zbiór studiów przygotowanych z okazji 10. lecia urzędu Rzecznika Praw Obywatelskich. Warszawa: Biuro Rzecznika Praw Obywatelskich, pp. 45-59.

Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws, No. 78, item 483, as amended).

Act of 18 April 2002 on the state of natural disaster (Journal of laws 2017, item 1897).

Judgment of the Constitutional Tribunal of 11 January 2000, K 7/99, OTK ZU No. 1/2000, item 2.

Judgment of the Constitutional Tribunal of 21 April 2009, K 50/07, OTK ZU No. 4A/2009, item 51.

Draft Law on civil protection and the state of natural disaster, number in the list of legislative works of the Council of Ministers: UD432. Available at: https://legislacja.rcl.gov.pl/projekt/12363754 (accessed: 22 November 2022).

Respect for democracy, human rights and the rule of law during states of emergency – Reflections. Available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e

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