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The issue of terrorism in Poland's state emergency regulations

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terrorism, states of emergency, state of natural disaster, state of exception, martial law

Introduction

The issue of terrorism engenders extensive interest and it is worthwhile to focus that interest on states of emergency (Pol. *stany nadzwyczajne*), i.e. the state of natural disaster (Pol. *stan klęski żywiołowej*), state of exception (Pol. *stan wyjątkowy*) and martial law (Pol. *stan wojenny*). It seems the terrorism–states of emergency connection contains information concerning not only specific regulations, but also more general problems. Taken cumulatively, they boil down to the question of whether currently applicable state of emergency regulations correspond to the challenges of modern terrorism. Can these regulations proficiently handle that threat's strength and dynamic nature?

Constitution

In Poland, states of emergency are currently controlled by three types of legal devices: the Constitution (Pol. *konstytucja*), acts (Pol. *ustawy*) and decrees (Pol. *rozporządzenia*). The most important of these is, of course,

the Constitution ratified 2 April 1997¹. Section XI of the Constitution, entitled, “*States of emergency*,” broadly defines characteristics shared by all states of emergency and separately defines foundations for each of the following: the state of natural disaster, state of exception and state of martial law. The principles include exceptionality, legality, proportionality, temporality, transiency, efficacy, protection for the foundations of the legal system and protection for representative bodies². The precept prohibiting discrimination is separate³. The foundations for particular states of emergency indicate the procedure for their invocation (a procedure that primarily defines the entities entitled to declare a given state of emergency and which are granted the authority to control or oversee such decision), the purpose of such declaration (which answers questions such as why the state of emergency is being declared, what effect it is to achieve), foundations for its declaration, (defining the circumstances in which a given state of emergency may be declared), territorial range (specifying the area of applicability), term of validity (specifying temporal duration) and exceptional measures (concerning any and all changes resulting from the declaration of each type of state of emergency)⁴.

None of the above enumerated issues, especially the foundations for declaration, name terrorism outright. This should not be surprising, however, even given the extensive and detailed regulation of states of emergency as exists in the Polish Constitution⁵. The nature of the Constitution effectively precludes listing specific threats⁶ because it is the

¹ Constitution of the Republic of Poland ratified 2 April 1997, DzU [*Journal of Laws*] 1997, No. 78, pos. 483, as amended, hereafter referred to as the Constitution.

² Art. 228 of the Constitution; L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2002, pp. 424–426.

³ Art. 233 paragraph 2 of the Constitution; see e.g. P. Sagan, *Prawo konstytucyjne Rzeczypospolitej Polskiej*, Warszawa 2001, p. 257; P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2000, p. 297.

⁴ Art. 229–234 of the Constitution; for more about constituent elements of the state of emergency see M. Brzeziński, *Stany nadzwyczajne w polskich konstytucjach*, Warszawa 2007, pp. 21–56.

⁵ The current Polish Constitution differs from previous Polish constitutions in that it is longer and more detailed. According to M. Kruk, *Konstytucja Rzeczypospolitej Polskiej z komentarzem*, Warszawa 1997, p. 35, chapter XI of the Constitution was drafted primarily under the influence of bad experiences related to martial law declared in 1981 and with the intent of avoiding such experiences in the future.

⁶ That is also the case in the constitutions of other states where the foundation for declaring states of exception often take the form of an undefined, exceptional (extreme)

supreme law of the land and covers an extensive subject matter range of the most fundamental issues for the state and its citizens⁷. Instead of listing specific threats, the Polish Constitution uses general and capacious terms and limits itself to connecting a given state of emergency with groups of threats appropriate thereto. With respect to the state of natural disaster, these include natural disasters as well as technological accidents so long as they share the indications of a natural disaster⁸. In a state of exception, these are threats to the constitutional order of the state, security of its citizens or public order⁹. For martial law, meanwhile, these are external threats to the state, such as a military attack on Polish territory or an obligation to common defense against aggression resulting from an international agreement¹⁰.

Most of the enumerated foundations do not exclude terrorist threats as one of the possible causes for declaring a specific state of exception or emergency. At the same time, however, the Constitution does not allow for the liberal interpretation of the foundations. According to the precept of legality, acts and decrees also constitute the legal bases for states of emergency¹¹. That is where one must seek greater specificity with respect to the foundations for applying states of emergency. The Constitution merely generally lays out that a state of natural disaster is the state's constructed response to natural and technical threats, the state of exception is a reaction to indirect or direct political threats to the state¹², while martial law is a response to external threats of a military nature.

threat – K. Wójtowicz, *Prezydenckie uprawnienia nadzwyczajne (analiza prawnoporównawcza)*, [in:] W. Skrzydło (ed.), *Ustrój i struktura aparatu państwowego i samorządu terytorialnego*, Warszawa 1997, p. 119; idem, *Uprawnienia nadzwyczajne Prezydenta Stanów Zjednoczonych*, Wrocław 1995, p. 10; J. Stembrowicz, *Rząd w systemie parlamentarnym*, Warszawa 1982, pp. 273, 274; idem, *Z problematyki stanu nadzwyczajnego w państwie burżuazyjno-demokratycznym*, "Studia Nauk Politycznych" 1983, No. 3, p. 20.

⁷ T. Stawecki, P. Winczorek, *Wstęp do prawoznawstwa*, Warszawa 2003, p. 150, 151.

⁸ Art. 232 of the Constitution.

⁹ Art. 230 of the Constitution.

¹⁰ Art. 229 of the Constitution.

¹¹ As such, the Constitution establishes a three-level legal basis for states of emergency: Constitution – acts – decrees. For more about the principle of legality see e.g. K. Prokop, *Stany nadzwyczajne w Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Białystok 2005, pp. 23–28.

¹² In the opinion of E. Ura, *Prawne zagadnienia bezpieczeństwa państwa*, Rzeszów 1988, p. 311, the decision to declare a state of emergency is always primarily political decision. Similarly J. Bafia, *Praworządność*, Warszawa 1985, pp. 226, 227.

State of natural disaster

The state of natural disaster is regulated by the Act dated 18 April 2002 on the State of Natural Disaster¹³ and only one, partially expired¹⁴, Decree of the Council of Ministers dated 20 February 2003 on the specific principles for the involvement of subunits and units of the Polish Armed Forces in preventing the results of disasters or removing the effects thereof¹⁵. In the regulations, only the act mentions terrorism (once) in a fragment concerning foundations for declaration, as additional detail. The act defines a natural disaster¹⁶, natural catastrophe¹⁷ and technological accident¹⁸. It also confirms the relationship that flows from the Constitution of the natural disaster as a natural catastrophe as well as the natural disaster in the form of a technological accident. As a result, it has been accepted that a natural disaster is a qualified form of natural catastrophe or technological accident. It also adds that

¹³ DzU [*Journal of Laws*] 2014, pos. 333, as amended, hereafter referred to as the Act on Natural Disasters.

¹⁴ The decree should be repealed and replaced. Under current legislation, the decree has become a «victim» of crisis management, which has basically overtaken solutions concerning tasks performed by the Arms Forces (compare § 2 of the decree with art. 25 paragraph 3 of the Act dated 26 April 2007 on Crisis Management, DzU [*Journal of Laws*] 2014, pos. 1166). As correctly noted by W. Kitler, *Bezpieczeństwo narodowe. Podstawowe kategorie, dylematy pojęciowe i próba systematyzacji*, Warszawa 2010, pp. 68, 69 – footnote 143, crisis management filled the gap that arose from constant aversion of introducing states of emergency.

¹⁵ DzU [*Journal of Laws*] 2003, No. 41, pos. 347.

¹⁶ In accordance with art. 3 paragraph 1 point 1 of the Act on Natural Disasters, a natural disaster is defined as a natural catastrophe or technological accident that threaten the life or health of a large number of people, extensive amounts of property or the environment on significant areas, where assistance and protection may be effectively provided only through the use of extraordinary measures with the cooperation of various bodies and institutions as well as specialized services and formations acting under a unified command.

¹⁷ In accordance with art. 3 paragraph 1 point 2 of the Act on Natural Disasters, natural catastrophe is defined as an event resulting from the forces of nature, especially lightning, seismic tremors, powerful winds, intense precipitation, lengthy duration of extreme temperatures, landslides, fires, drought, floods, icing of rivers and seas as well as lakes and reservoirs, mass infestation of pests, plant or animal disease, human infectious disease or the activity of another element.

¹⁸ Pursuant to art. 3 paragraph 1 point 3 of the Act on Natural Disasters, a technological accident is defined as the sudden, unexpected damage or destruction of a constructed facility, technical device or system of technical devices resulting in the interruption of their use or loss of their properties.

both a technological accident and catastrophe may be caused by terrorist activity¹⁹. This resolves any doubt; it is clearly possible to declare a state of natural disaster due to terrorism. At the same time, however, nothing else has been done. Both, when it comes to the foundation for declaration, as well as with respect to the act's remaining provisions, especially emergency measures. All this leads to the question of whether such a situation is apposite and what may be its consequences.

With respect to the foundations for declaration, we might deem as obvious that terrorist activity may cause a natural catastrophe or technological accident. This regulation even seems superfluous, because, it is the facts that are significant to the legislator, i.e. occurrence of a qualified catastrophe or accident, rather than the cause. Furthermore, this regulation has not been completely considered. It is difficult to imagine that all the kinds of natural catastrophes enumerated in the definition could be caused by terrorist activity. This applies to lightning, seismic tremors, powerful winds, intense precipitation, lengthy duration of extreme temperatures, landslides, drought, and the icing of rivers and seas as well as lakes and reservoirs. What, therefore, could have been the reason for including terrorism into the act and associating it with the foundation for declaring a state of natural disaster? It seems the time during which the parliamentary work on the act took place and the year in which it was ratified (2002) might offer a suggestion. This is the time when the events of 11 September 2001 occurred in the United States, the worldwide publicity and effects of which turned popular attention to the issue of terrorism.

In the remaining provisions of the act, it is difficult to find relationships with terrorist activity; at most, these might be found in emergency measures limiting human and civil rights and freedoms. Assuming the occurrence of a natural disaster due to a technological accident, these might include limitations on the freedom of economic activity e.g. suspension of the activity of certain businesses, the obligation to submit to a medical examination, treatment, protective vaccination required to combat infectious disease, the effects of chemical and radioactive contamination, a prohibition against entry to specific locations, facilities or defined areas²⁰. All this, however, is unable to disguise the act's total incongruity. Terrorist activity is political and combating such requires limitations on freedom and political rights. Meanwhile, in the case of

¹⁹ Also through events in cyberspace – art. 3 paragraph 2 Act on Natural Disasters.

²⁰ Art. 21 paragraph 1 point. 1, 5, 13 Act on Natural Disasters.

the state of natural disaster, these limitations are mere background for means of rescuing or assisting in the rescue of life, health, property and the environment against natural or technical threats.

State of Exception

The state of exception is regulated by the Act dated 21 June 2002 on the State of Exception²¹ and just one Decree of the Council of Ministers dated 20 December 2013 on detailed principles for use of units and subunits of the Polish Armed Forces during states of exception²². Of these regulations, the issue of terrorism appears only in the act (once) in the fragment concerning foundations for application in the form of additional detail. The adopted form of regulation is identical to the state of natural disaster and allows only for the review of foundations as well as the review of the remaining provisions of the act in their entirety, especially emergency measures.

The Act on States of Exception repeats after the Constitution that this state may be declared due to a threat to the constitutional order, security of citizens or public order. A limitation is added to the threat to the constitutional order, pursuant to which declaring the state of exception is possible only when the threat is particular. The act also indicates that all three foundations may result from terrorist activity²³. None of the foundations are defined, leaving their content to be established via doctrine.

Threats to the constitutional order of the state, security of citizens, and public order are considered foundations concerning internal threats of a socio-political, general and vague nature²⁴. The form of enumeration indicates they are severable, i.e. each may alone constitute the basis for invoking a state of exception. At the same time, the state of exception

²¹ DzU [*Journal of Laws*] 2014, pos. 1191, hereafter referenced as the Act on State of Exception.

²² DzU [*Journal of Laws*] 2013, pos. 1733.

²³ As well is through activities in cyberspace – art. 2 paragraph 1 Act on State of Exception.

²⁴ J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warszawa 1999, p. 199; A. Cieszyński, *Stany nadzwyczajne w konstytucji RP z 1997 r.*, [in:] Z. Witkowski (ed.), *Wejście w życie nowej Konstytucji Rzeczypospolitej. XXXIX Ogólnopolska Konferencja Katedr Prawa Konstytucyjnego. Księga Pamiątkowa*, Toruń 1998, p. 180; K. Prokop, *Stany nadzwyczajne w Konstytucji...*, p. 74.

may also be declared in the event of their simultaneous occurrence²⁵. Taken together, they allow for the conclusion that the state of exception may be used for various reasons, including a coup (threat to the state's constitutional order²⁶), mass banditry (threat to citizens' security²⁷), as well as mass blocking of roads and strikes (threat to the public order²⁸)²⁹. Such a broad scope of foundations and their discretionary nature mean the bodies invoking the state of exception should take into account the possibility that their activities may be judged in a different manner³⁰ by society and the political opposition. Furthermore, certain commentators note the "state of exception includes two states of emergency. One of them may be introduced in the event of an internal threat of the most fundamental nature (...) [threat to the state's constitutional order]. It is a threat nearly equal to the threat of foreign intervention (war) and,

²⁵ W.J. Wołpiuk, *Państwo wobec szczególnych zagrożeń. Komentarz wybranych przepisów Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2002, p. 92; R. Socha, *Instytucja stanu wyjątkowego w polskim prawodawstwie*, "Wojskowy Przegląd Prawniczy" 2003, No. 4, p. 26.

²⁶ This threat concerns the state's fundamental institutions as well as their principles of organization and functioning. In connection with the requirement that the threat concern the constitutional order of the state, it should be accepted that the indicated institutions must be listed in the Constitution. As such, a condition for invoking a state of exception is only a threat that goes directly to the Constitution, i.e. the foundations of state order, its most important institutions and principles – W.J. Wołpiuk, *Państwo wobec szczególnych zagrożeń...*, p. 93.

²⁷ This threat means a condition in which life, health and property of citizens are threatened on a scale and intensity prohibiting the normal existence of the general population. However, it must be kept in mind that the perception of security depends on the social acceptance of a given legal system, its political system and rules establishing the social order. K. Prokop provides a detailed analysis of the foundations for the threat to the security of citizens and foundations for a threat to the public order in *Stany nadzwyczajne w Konstytucji...*, pp. 81–90.

²⁸ This threat is deemed to be very general. That is why it should not be invoked as a last resort, i.e. due to the inability to indicate the foundation (threat to the security of citizens). Invoking the foundation of a threat to the public order should be warranted by the particular nature of the threats or mass violations to the public order – principles for the operation of public institutions, devices of public utility, or rights applicable in a democratic society – K. Prokop, *Stany nadzwyczajne w Konstytucji...*, pp. 85–88; W.J. Wołpiuk, *Państwo wobec szczególnych zagrożeń...*, p. 94.

²⁹ P. Winczorek, *Komentarz do Konstytucji...*, p. 293; W.J. Wołpiuk, *Państwo wobec szczególnych zagrożeń...*, p. 94; W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Zakamycze 2000, p. 313.

³⁰ L. Garlicki, *Polskie prawo konstytucyjne*, p. 430, 431; W.J. Wołpiuk, *Państwo wobec szczególnych zagrożeń...*, p. 94.

in that sense, it is justified to deviate from the normal functioning of the state system similarly to martial law. The second form of the state of exception may be introduced in a situation where (...) the threat is severe, does not threaten the existence of the state [threatening instead] certain areas of its operation (...)” [threat to the security of citizens and public order]³¹.

The foundations for declaration of the state of exception are clearly linked to terrorist activity. This is obvious, as with respect to the state of natural disaster. However, with respect to the state of exception, this relationship is natural and may concern every foundation without reservation or doubt. This correlation results from the political nature of the state of exception, which has forever been invoked in connection with activities purposely directed at the regular functioning of the state. As such, acts of a terrorist nature seem to be a classic example.

The relationship to terrorism should be reflected in emergency measures. However, the act fails to note terrorist threats and their tremendous significance. It lacks any means to influence criminal procedure, including extended detention, arrest or limitation and access to an attorney. The act also has no other solutions or references to existing acts so characteristic of the “war on terror”³². All this allows for the conclusion that the act’s emergency measures are of a general nature. They may, in fact, be used to combat terrorist threats, however, they may equally well be used with respect to other threats. Their general nature does not compromise the state of exception. This state may be an effective tool, provided it goes along with skillful use of the measures it contains and the adoption of decrees.

An example of measures used to prevent terrorism is detention (Pol. *odosobnienie*), referred to in the past in Poland as internment (Pol. *internowanie*). This measure, always associated with states of exception, allows a individual to be detained pursuant to a decision of the voivode (Pol. *wojewoda*), i.e. a government administrative body, rather than a court (an independent body) as the case would be in normal conditions as opposed to under the state of exception. To use detention in such circumstances it is sufficient to have “reasonable suspicion” or “certainty of necessity.” In such cases, prosecutorial bodies (Pol. *proku-*

³¹ K. Prokop, *Stany nadzwyczajne w Konstytucji...*, p. 77.

³² For more about the British, American, French, Russian, German, Japanese, and Swiss legislation concerning terrorism prevention, see P. Mickiewicz, *System bezpieczeństwa narodowego w rozwiązaniach ustrojowych wybranych państw*, Wrocław 2012.

ratura), the police (Pol. *Policja*), Internal Security Agency (Pol. *Agencja Bezpieczeństwa Wewnętrznego* – ABW), Border Guard (Pol. *Straż Graniczna* – SG), Military Police (Pol. *Żandarmeria Wojskowa* – ŻW), and Military Counterintelligence Services (Pol. *Służba Kontrwywiadu Wojskowego* – SKW) may apply to the voivode to detain two categories of individuals. The first category is “political” and includes individuals against whom it is reasonably suspected that, if not detained, will conduct activity threatening the constitutional order of the state, security of citizens, or the public order. The second category is “criminal” and concerns individuals detained to prevent the commission of a crime or to prevent escape after commission of such crime³³.

An example of a decree that could be very helpful in preventing terrorist activity is one that limits the functioning of communication, operation of telecommunications and postage systems. The act allows for the minister in charge of communication to issue a decree regulating the shutting down of communication devices or suspension of communication services³⁴. Another decree provided for in the act is a decree of the Council of Ministers regarding the procedures for censorship and review bodies, which decree may detail the review of the content of telecommunications, telephone conversations, signals sent via telecommunication networks, as well as the emission of signals that prevent broadcast or reception of radio, television signals or broadcasting or reception using telecommunications devices and networks³⁵.

Martial law

Martial law is regulated by the Act dated 29 August 2002 on Martial Law³⁶ and two decrees: 1) the Decree of the Minister of Infrastructure dated 30 August 2004 on appropriation or requisition of means of transport for national defense purposes during martial law³⁷, and 2) the Decree of the Council of Ministers dated 21 September 2004 regarding

³³ Art. 17 paragraph 1, 3, 4, 6 Act on State of Exception.

³⁴ Art. 21 point 6, art. 22 paragraph 3 point 4 Act on State of Exception.

³⁵ Art. 20 paragraph 1 point 3 and 4, art. 20 paragraph 8 of the Act on State of Exception.

³⁶ The complete title of the act is: on martial law and the authority of the Commander in Chief and the principles for his subordination to the constitutional bodies of the Republic of Poland, DzU [*Journal of Laws*] 2014, pos. 1815, hereinafter referred to as the Act on Martial Law.

³⁷ DzU [*Journal of Laws*] 2004, No. 200, pos. 2055, as amended.

the appropriate limitations to human and civil rights and freedoms to be applied during martial law with respect to individuals whose activity threatens the defense and security of the state as well as the procedures in such cases³⁸. In these regulations, terrorism appears only in the act (once) as a detail for one of the foundations for use.

Aside from two differences, the adopted regulation is nearly identical to the acts on the state of natural disaster and state of exception. The first difference is that terrorist threats may only result from an external threat to the state³⁹. Terrorist activity may not justify the other two foundations for use for obvious reasons. A military attack on Polish territory⁴⁰ and an obligation for mutual defense against aggression resulting from an international agreement⁴¹ are foundations identical to the foundations for the declaration of the state of war⁴². On this basis, it is considered that martial law was directly tied to other states and threats the sources of which originate outside domestic borders and are of a military nature⁴³. The second difference, only as compared to the state of exception, is the

³⁸ DzU [Journal of Laws] 2004, No. 219, pos. 2219.

³⁹ This threat may also result from activities in cyberspace – art. 2 paragraph 1 of the Act on Martial Law.

⁴⁰ In the case of a military attack that may take the form of a violation of land, maritime or airspace borders, this is not defined by domestic law and there is no definition in international law. The doctrine of this law is understood generally as the use of military measures to violate the territorial integrity and political sovereignty of another state (A. Cieszyński, *Stany nadzwyczajne w konstytucji...*, p. 178; K. Prokop, *Stany nadzwyczajne w Konstytucji...*, p. 49; L. Garlicki, *Polskie prawo konstytucyjne*, p. 429; K. Prokop, *Stan wojny a stan wojenny w Konstytucji RP*, "Państwo i Prawo" 2002, vol. 3, pp. 26, 27). Moreover, it is considered that this foundation should be construed in connection with the United Nations Charter (see art. 51 United Nations Charter describing the right of states to self-defense (DzU [Journal of Laws] No 1947, No. 23, pos. 90); for more about the foundation, see K. Prokop, *Stany nadzwyczajne w Konstytucji...*, pp. 48–54).

⁴¹ In the case of an international agreement that dictates an obligation to common defense against aggression, this foundation is linked with NATO (DzU [Journal of Laws] 2000, No. 87, pos. 970). This foundation indicates that martial law may be introduced not only when the external threat is of a direct nature, but also when it is indirect i.e. concerns states that are members of the common defense block (L. Wiśniewski, *Stany nadzwyczajne w projekcie nowej Konstytucji RP*, [in:] T. Jasudowicz (ed.), *Prawa człowieka w sytuacjach nadzwyczajnych ze szczególnym uwzględnieniem prawa i praktyki polskiej*, Toruń 1997, p. 151; P. Winczorek, *Prawo konstytucyjne Rzeczypospolitej Polskiej. Podręcznik dla studentów studiów nieprawniczych*, Warszawa 2003, p. 345; L. Garlicki, *Polskie prawo konstytucyjne*, p. 429; for more about the foundation see K. Prokop, *Stany nadzwyczajne w Konstytucji...*, pp. 55–57).

⁴² Art. 116 paragraph 2 of the Constitution.

⁴³ L. Garlicki, *Polskie prawo konstytucyjne*, p. 427; A. Cieszyński, *Stan wojny a stan wojenny w przeobrażającym się polskim prawie konstytucyjnym – rekonstrukcja historyczna oraz analiza*

definition of an external threat to the state. In accordance with the act, these threats are defined as deliberate activities undertaken by entities foreign with respect to Poland which menace its sovereignty, territorial integrity, material and economic interest, or intend to obstruct or materially hinder normal functioning of the state⁴⁴. The adopted definition appeared in 2011 as a result of the amendment of the Act on Martial Law⁴⁵. The change introduced seems to respond to accusations that the threat to the state was the least defined foundation and that any attempts to increase the definition's precision were doomed to failure⁴⁶. The legislative definition expounds on the concept of an external threat to the state, i.e. it narrows it to deliberate activities, focuses on their damaging nature to Poland's vital interests and strategic goals, does not link these activities solely with the state and removes their territoriality, it does not tie them to the location of occurrence⁴⁷. As a result, martial law may be precipitated by terrorist activity, but this possibility seems to be the last resort. Martial law is, above all, a response to a military threat from another state. Here, references to terrorist activity appear "just in case".

The circumstance is similar with emergency measures. Just as with the Acts on Natural Disaster and State of Exception, the emergency measures contained in the Act on Martial Law are of a general nature and may be used in combating various threats, including terrorism. However, as compared to the aforementioned states, especially to the state of exception, this option seems the least probable. The reason is the act's low legislative quality. The emergency measures employed under martial law may be divided into two groups. The first group is copied from the Act on the State of Exception. The second group constitutes original measures, which directly concern an armed conflict. The first

regulacji współczesnych (1921–1997), [in:] E. Kustra (ed.), *Przemiany polskiego prawa (lata 1989–1999)*, Toruń 2001, p. 272; idem, *Stany nadzwyczajne w konstytucji...*, p. 178.

⁴⁴ Art. 2 paragraph 1a of the Act on Martial Law.

⁴⁵ Art. 1 point 2 of the Act dated 30 August 2011 on amending the Act on Martial Law and the authority of the Commander in Chief and the principles for his subordination to the constitutional bodies of the Republic of Poland and certain other acts (DzU [Journal of Laws] 2011, No. 222, pos. 1323).

⁴⁶ K. Prokop, *Stany nadzwyczajne w Konstytucji...*, p. 45–48; L. Garlicki, *Polskie prawo konstytucyjne...*, pp. 427, 428; A. Cieszyński, *Stan wojny a stan wojenny...*, p. 272.

⁴⁷ Reasoning behind the draft act to amend the Act on Martial Law and the authority of the Commander in Chief and the principles for his subordination to the constitutional bodies of the Republic of Poland and certain other acts (form No. 4355), pp. 5, 6, [http://orka.sejm.gov.pl/Druki6ka.nsf/0/0C7D2B7644A7B3C5C12578BD00339405/\\$file/4355.pdf](http://orka.sejm.gov.pl/Druki6ka.nsf/0/0C7D2B7644A7B3C5C12578BD00339405/$file/4355.pdf), 7.10.2015.

group relates to terrorist activity. However, instead of referencing the Act on State of Exception, and in one rule enumerating the state of exception measures needed during martial law⁴⁸, the act repeats them verbatim or with minimum modifications. The entirety has been done in a manner that requires correction. For example, there is no mention of detention and the ability to suspend the right of assembly; it limits assembly of previously registered social organizations seemingly permitting registration of new associations⁴⁹. As a result, martial law should be deemed a type of state of emergency that seems least fitting to preventing terrorist activity. Not because it is unsuited to the threat terrorist activity poses, but because it requires a thorough cleanup of its emergency measures. Without such cleanup, it seems of little use.

Conclusion

Polish state of emergency regulations are not entirely adapted to combating terrorist activity. While they reference the issue of terrorism, they do so only in the realm of foundations for declaring various states of emergency, while entirely ignoring the far more important issue of emergency measures. The current state of affairs indicates that states of emergency are not adapted to the challenges posed by modern terrorism. However, this evaluation is superficial and fragmentary. Lack of adaptation of states of emergency has a broader character and concerns not only terrorist threats. This evidences the legislator's general approach to states of emergency, one that might be defined as their consistent marginalization. Despite its extensive appearance in the Constitution and adoption of certain acts, these acts are amended in a very limited manner while the decrees they announced and relevant amendments have never been issued. The result is the gradual outdateding of regulations, their increased generality and tendency toward anachronism. The reason for such treatment seems to be the historical experiences that effectively tie states of emergency with the martial law declared on 13 December 1981 in Poland. Unfortunately, this event permanently transferred the

⁴⁸ That was done in the Act dated 23 June 1939 on Martial Law (*DzU [Journal of Laws] 1939, No. 57, pos. 366*), where art. 2 directly states that invocation of martial law equals suspension of specific civil rights the effects of which are described in the Act dated 22 February 1937 on the State of Exception (*DzU [Journal of Laws] 1937, No. 17, pos. 108*).

⁴⁹ Art. 22 paragraph 1 point 3 Act on State of Exception.

concept of states of emergency from the realm of particular institutions that have actual application and are typical within democratic states into a mythical realm constructed of memories, emotions, sufferings, associations and political score settling. Such an association effectively ruins the image of states of emergency and causes them to be viewed as increasingly less useful. This view may cause legislators to reject the likelihood of a particular threat that renders the state helpless and requires declaration of states of emergency.

ABSTRACT

This article concerns terrorism and Polish state of emergency regulations. The goal of the article is to examine the definition of terrorism threats in the Polish Constitution ratified April 2, 1997 and in the Act dated 18 April 2002 on the State of Natural Disaster, Act dated 21 June 2002 on the State of Exception and Act dated 29 August 2002 on Martial Law. The entirety focuses on the foundations for declaration the above states of emergency. In addition to those states of emergency, it references emergency measures. The article analyzes whether terrorist activities comply with the foundations for invoking and the utility of emergency measures in combating terrorist threats.

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PROBLEM TERRORYZMU W POLSKICH REGULACJACH STANÓW NADZWYCZAJNYCH

Artykuł dotyczy terroryzmu oraz polskich regulacji stanów nadzwyczajnych. Jego celem jest sprawdzenie, w jaki sposób zagrożenia terrorystyczne zostały określone w konstytucji z dnia 2 kwietnia 1997 r. oraz w ustawach: z dnia 18 kwietnia 2002 r. o stanie klęski żywiołowej, z dnia 21 czerwca 2002 r. o stanie wyjątkowym oraz z dnia 29 sierpnia 2002 r. o stanie wojennym. Całość skupia się na przesłankach zastosowania wymienionych stanów nadzwyczajnych. Poza nimi odnosi się do środków nadzwyczajnych. W artykule przeanalizowano zgodność działań o charakterze terrorystycznym z przesłankami zastosowania oraz przydatność środków nadzwyczajnych do zwalczania zagrożeń terrorystycznych.

SŁOWA KLUCZOWE: *terroryzm, stany nadzwyczajne, stan klęski żywiołowej, stan wyjątkowy, stan wojenny*

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