

Restrictions on the freedom and rights of the individual for reasons of protection of state security and public order during the period of emergency states

Abstract

The purpose of the article is to present issues related to the limitation of the freedom and rights of the individual in the situation of the introduction of an emergency. The analysis will be based on the current provisions contained in the current constitution and statutes.

Keywords: extraordinary states, human rights, constitution, state security, public order.

The provisions of the Constitution of the Republic of Poland¹ define the situations in which it is possible to limit the rights and freedoms of man and citizen. They mainly concern situations in which one of the emergency states may be introduced. According to the provision of article 228 (1) of the Constitution of the Republic of Poland in a situation of particular danger, if ordinary constitutional measures are insufficient, an appropriate extraordinary state may be introduced, i.e. martial law, state of emergency or a state of natural disaster. The extent to which the freedoms and rights of man and citizen can be limited during particular emergency states is specified in the Act² (Article 228 (3) of the Constitution of the Republic of Poland). In addition, it should be borne in mind

¹ (Dz. U. 1997 No 78 item 483 as amended).

² K. Prokop, *Stany nadzwyczajne* [in:] S. Bożyk (ed.), *Prawo konstytucyjne*, Białystok 2014, p. 427 – 428; M. Brzeziński, *Stany nadzwyczajne w polskich konstytucjach*, Warszawa 2007, p. 168 – 179.

that measures taken as a result of an emergency, or restrictions on the exercise of human and civil liberties, must correspond to the degree of threat and should aim at restoring the normal functioning of the state as soon as possible (Article 228 (5) Constitution of the Republic of Poland). The indicated provision establishes the principle of proportionality which requires that actions, also in the field of human and civil rights and freedoms, are proportional to real needs. The extent to which the freedoms and rights of man and citizen can be limited during particular emergency states is specified in the Act (Article 228 (3) of the Constitution of the Republic of Poland). In addition, it should be borne in mind that measures taken as a result of an emergency, or restrictions on the exercise of human and civil liberties, must correspond to the degree of threat and should aim at restoring the normal functioning of the state as soon as possible (Article 228 (5) Constitution of the Republic of Poland). The indicated provision establishes the principle of proportionality which requires that actions, also in the field of human and civil rights and freedoms, are proportional to real needs. This means that it is unacceptable to restrict and interfere with the rights and freedoms of man and citizen over the necessary level³.

The provisions of the Constitution of the Republic of Poland provide for the possibility of introducing one of the three extraordinary states: martial law, state of emergency and state of natural disaster. Martial law may be introduced in the event of an external threat to the state, armed attack on the territory of the Republic of Poland or when the international agreement implies an obligation to jointly defend against aggression (Article 229 of the Constitution of the Republic of Poland). In turn, a state of emergency can be introduced in the event of a threat to the constitutional state system, security of citizens or public order (Article 230 (1) of the Constitution of the Republic of Poland). On the other hand, the state of natural disaster can be introduced in order to prevent the consequences of natural disasters or technical failures that bear the marks of a natural disaster and to remove them (Article 232 of the Constitution of the Republic of Poland). Each of the identified states of emergency may be introduced after the other grounds. Nevertheless, each of them is associated with the occurrence of a special threat situation.

³ M. Grzesik – Kulesza, *Prawa człowieka – zarys ogólny* [in:] H. Zięba – Załucka (ed.) *System ochrony praw człowieka w RP*, Rzeszów 2015, p. 32 – 34; K. Prokop, *Stany nadzwyczajne...*, p. 429, 434, 437.

According to the provision of art. 228 (1) of the Constitution of the Republic of Poland may be introduced: martial law, state of emergency or a state of natural disaster. The extraordinary state can be introduced only on the basis of the Act, by way of a regulation, which is subject to additional public disclosure (Article 228 (2) of the Constitution of the Republic of Poland). As mentioned earlier states of emergency they may be introduced in situations of particular danger. It must therefore be assumed that such situations will be associated with a particular approach to, among others, the rights and freedoms of man and citizen. This means it can be reduced, under certain strict conditions, rights and freedoms of man and citizen. In addition, during the extraordinary circumstances, the possibility is suspended Constitution, electoral regulations for the Government, Senate and local self-government bodies, the Act on the election of the President of the Republic and the Act on Extraordinary Conditions (Article 228 (6) of the Constitution of the Republic of Poland). So we can say that while the ability to change these laws during states of emergency in general has been disabled, it is within the rights and freedoms of man and citizen it is possible to reduce them⁴.

Comparing each of the above solutions, it can be concluded that the prohibition of change specific legal acts are aimed at protecting the political system of the Republic of Poland and the principles of selecting its organs. This is to prevent the situation when, in connection with the introduction of one of the extraordinary states, attempts are made to influence the shape of the political system and system of the Republic of Poland. The adoption of such a solution should be considered as justified. Its guaranty nature allows for the stabilization of the political system and protects it against violent and misguided changes that could be carried out in a situation of a particular threat to the state. A similar character has the regulation contained in the provision of art. 228 (7) of the Constitution of the Republic of Poland. According to its content, during the emergency and during the 90 days following its conclusion, the term of office of the Government, a nationwide referendum, the elections to the Government, the Senate, local self-government bodies and the election of the President of the Republic cannot be shortened. In addition, the terms of office of these bodies shall be extended accordingly. Moreover, elections to local self-government bodies are possible only where the state of emergency has not been introduced. This solution is a reference and continuation of the ban on changes

⁴ Ibidem, p. 431 – 432, 436, 438 – 439.

to some legal acts discussed earlier. The ban on shortening the term of office of legislative bodies as well as the ban on elections and the nationwide referendum is aimed at preventing situations in which, due to the state of emergency or its ongoing effects, the result of the election will be distorted. In turn, the extension of the term of office of the authorities is aimed at ensuring stable functioning of the state. The above-mentioned regulations contain prohibitions in terms of changing the law, as well as the conduct of elections and the national referendum aimed at protecting the country by the adverse changes that could be made in the situation of a specific threat to the state. The effects of such changes could turn out to be very negative for the functioning of the Republic of Poland. Therefore, it should be considered justified to introduce a ban on them at the time and immediately after the period of operation of a particular emergency state.

The provisions of the Constitution of the Republic of Poland specify what may be the scope of restrictions on freedom and human and civil rights in connection with the introduction of one of the emergency states⁵. In the first place, it should be emphasized again that such restrictions must be specified by statute. The authors of the Basic Law applied the negative and positive method in the scope of defining statutory restrictions on freedom and human and civil rights. According to the provision of art. 233 (1) of the Constitution of the Republic of Poland during martial law and special law cannot be restricted: human dignity (Article 30 of the Constitution of the Republic of Poland), citizenship (Articles 34 and 36 of the Constitution of the Republic of Poland), protection of life (Article 38 of the Constitution of the Republic of Poland), humanitarian treatment (Article 39, 40, 41 (4) of the Constitution of the Republic of Poland), criminal liability (Article 42 of the Constitution of the Republic of Poland), access to court (Article 45 of the Constitution of the Republic of Poland), personal rights (Article 47 of the Constitution of the Republic of Poland), conscience and religion (art. 53 of the Constitution of the Republic of Poland), petitions (Article 63 of the Constitution of the Republic of Poland) and family and child (Articles 48 and 72 of the Constitution of the Republic of Poland) It is clear from the content of this regulation that other freedoms and rights may be subject to restrictions. they are not subject to restrictions allowed to specify that the remaining ones can be

⁵ B. Banaszak, *Prawo konstytucyjne*, Warszawa 2015, p. 378 – 381; K. Prokop, *Stany nadzwyczajne w Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Białystok 2005, p. 131 – 139.

limited. In addition, according to the provision of art. 233 (2) of the Constitution of the Republic of Poland, it is unacceptable to limit the freedom and rights of a person and a citizen solely on the basis of race, sex, language, religion or its absence, social origin, birth and property⁶. This regulation excludes the possibility of restricting freedoms and human and civil rights, which are based only on certain personal characteristics. While analyzing the content of the discussed provisions, it should be emphasized that the negative definition of the catalog of freedoms and rights that are not subject to limitation concerns martial law and the state of emergency.

This allows to put a thesis that the creators of the Constitution recognize that during these extraordinary circumstances it may be necessary and permissible to limit the freedom and rights more extensively including a broader catalog. In terms of the state of natural disaster, the founders of the Constitution have made a positive indication of freedom and human and civil rights, which may be limited. This means that due to the introduction of a state of natural disaster, other freedoms and rights cannot be restricted. Based on the provision of art. 233 (3) of the Constitution of the Republic of Poland may be limited: freedom of economic activity (Article 22 of the Constitution of the Republic of Poland), personal freedom (Article 41, paragraphs 1, 3 and 5 of the Constitution of the Republic of Poland), inviolability of housing (Article 50 of the Constitution of the Republic of Poland), freedom of movement and residence on the territory of the Republic of Poland (Article 52 (1) of the Constitution of the Republic of Poland), the right to strike (Article 59 (3) of the Constitution of the Republic of Poland), property rights (Article 64 of the Constitution of the Republic of Poland), freedom of work (Article 65 (1) of the Constitution of the Republic of Poland), the right to safe and healthy working conditions (Article 66 (1) of the Constitution of the Republic of Poland) and the right to rest (Article 66 (2) of the Constitution of the Republic of Poland). The catalog of freedoms and rights listed above, which may be limited, is of a closed nature. The way of editing the provision of art. 233 (3) of the Constitution of the Republic of Poland indicates that it is impossible to limit other freedoms and rights in connection with the introduction of a state of natural disaster⁷.

⁶ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2013, p. 307 – 308.

⁷ W. J. Wołpiuk, *Państwo wobec szczególnych zagrożeń. Komentarz wybranych przepisów Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2002, p. 102 – 105.

Turning to the assessment of the regulations regarding the possibility of limiting freedoms and rights under the current Constitution of the Republic of Poland, it must be stated that it is possible to limit the freedom and rights in connection with the introduction of martial law and the state of emergency. On the other hand, smaller possibilities in this respect occur in connection with the introduction of a state of natural disaster. Undoubtedly, this is due to the fact that in the case of the first two extraordinary situations, the level of special threats is higher. It can also be said that the source of these threats is more serious. Therefore, it is justified to be able to restrict freedom and rights more during their lifetime. In connection with the above, the negative method of determining freedoms and rights, which can not be subject to limitation, was applied. Other rights may, however, be limited due to the continuance of the emergency. In terms of the state of the disaster, it should be assumed that, as a rule, it is associated with a lower level of special threat than martial law or state of emergency. This is also due to the nature and sources of specific threats. Therefore, the creators of the Constitution of the Republic of Poland positively indicated freedoms and rights that may be limited in connection with the introduction of a state of natural disaster. This results in the inability to restrict other rights and freedoms.

Bearing in mind the above analysis, it can be stated that in the realities of the functioning of the legal system of the Republic of Poland, it is possible to limit a relatively broad catalog of freedoms and human and civil rights. Based on the provision of art. 234 (1) of the Constitution of the Republic of Poland in a situation when the Government can not meet for a meeting, the President of the Republic, at the request of the Council of Ministers, issues a regulation with the force of law within the scope and within the limits specified in art. 228 (3-5). The regulation is of the nature of the generally applicable law.

Based on the provision of art. 3 (2) of the Act of 29 August 2002 on Martial Law and on the competences of the Supreme Commander of the Armed Forces and the principles of its subordination to the organs of the Republic of Poland⁸ (hereinafter: the Act on Martial Law), the regulation specifies, to the extent permissible by law, types of restrictions on freedoms and rights man and citizen. The types of restrictions on freedom and human and civil rights set out in the Regulation should correspond to the nature and intensity of threats constituting the reasons for imposing martial law, and ensure effective restoration of normal state

⁸ (Dz. U. 2002 r. No 156, item 1301 as amended).

functioning⁹. Based on the provision of art. 19 of the Martial Law Act during its lifetime the right to employee strikes and other forms of protest may be suspended in relation to specific categories of employees or in specific areas; strikes and non-strikes forms of farmers' protest actions; protest actions of students organized by student self-governments, associations or organizations. Moreover, during martial law, in the case of persons whose activities threaten the security or defense of the state, it is possible to search these people or search their flat, as well as to take up objects used to conduct this activity¹⁰. This regulation is also applicable to the search of other rooms, vehicles, aircraft and vessels.

In addition to the above regulations, martial law may be introduced: preventive censorship of the media including press materials; control of the content of parcels, letters, parcels and remittances handed over as part of universal postal services or courier services; control of the content of telecommunications correspondence and telephone conversations or signals transmitted in telecommunications networks; the emission of signals that prevent the transmission or reception of radio, television or telecommunications transmissions and networks, the content of which may increase the threat to the security or defense of the state¹¹. At the same time, the authorities of censorship and control are entitled to retain in whole or in part publications, postal and courier items and telecommunications correspondence, as well as to terminate telephone conversations and transmission of signals sent in telecommunications networks, if their content or content may increase the security or defense threat of the state .

Nonetheless, preventive censorship does not include the means of social communication belonging to churches and other religious organizations that provide information on religion and serve to fulfill religious functions. Under the provision of Article 22 (1) of the Martial Law Act during martial law may be suspended rights to: organize and conduct all kinds of meetings; organizing and conducting mass events as well as cultural and entertainment events not being mass events conducted as part of cultural activities; association by ordering temporary abandonment of registered associations, political parties, trade unions, socio-professional organizations of farmers, employers' organizations, civic movements and other voluntary associations and foundations whose activities may hinder the

⁹ Article 18 (2) of the Martial Law Act.

¹⁰ Article 20 (1) of the Martial Law Act.

¹¹ Article 21 (1) of the Martial Law Act.

implementation of defense tasks. The above regulation does not apply to assemblies organized by churches and other religious associations and religious organizations operating within temples, church buildings, other rooms serving for organizing and public worship, as well as assemblies organized by state organs or local self-government bodies. In the area of martial law, a person under 18 years of age who is staying in a public place may be required to carry an ID card or other identity document and a school ID (for a learner under 18 years of age)¹². In addition, during martial law may be introduced orders or prohibitions: staying or leaving at a fixed time marked places, objects and areas; obtaining permission from public administration authorities to change their place of permanent and temporary residence; to notify the authorities of the population or police records of arrival to a specific place within a specified period; preservation of the appearance or other characteristics of specific places, facilities or areas using technical means. During martial law there may also be restrictions on freedom and human and civil rights in the scope of: access to consumer goods, through total or partial rationing of the supply of people; the freedom of contractual agreement between parties to the contract, by prohibiting periodically raising prices for goods or services of a certain type or ordering the use of prices set on goods or services of fundamental importance to the costs of consumer maintenance; freedom of economic activity, by ordering temporary discontinuation of a particular type of business or establishing an obligation to obtain a permit to start a particular type of business; educational activities, through the periodic suspension of classes in schools, including universities, except for schools of clergy and clerical seminaries; trading in domestic means of payment, foreign exchange transactions and bureau de change; operation of communication systems and telecommunications and postal activities, by ordering the exclusion of communication devices or suspension of service provision for a definite period, and also by ordering immediate deposit of radio and television transmitting and transmitting-receiving devices to the deposit of the competent governmental administration or establishing another way of securing them before being used in a manner threatening the security or defense of the state; the right to possess firearms, ammunition and explosives, and other types of weapons or specific objects, by ordering immediate deposit of the competent government administration body or prohibiting the wearing;

¹² Article 23 (1) of the Martial Law Act.

access to public information¹³. The restrictions on freedom and human and civil rights set out above by the President of the Republic of Poland in the Regulation are introduced and applied by means of ordinances issued by the Council of Ministers, a proper minister or voivode.

The ordinances specify a detailed procedure and methods as well as the area, subjective and objective scope of introducing and applying restrictions on freedom and human and civil rights, taking into account to the extent possible the minimization of individual and social nuisances resulting from the application of these restrictions. At the same time, based on the provision of article 25 (1) of the Martial Law Act, you can: impose on the entrepreneurs additional tasks, the implementation of which is necessary for the security or defense of the state and provide for the supply of people; introduce a receivership board for entrepreneurs, including foreign capital, if the object of their activity is production of goods or provision of services of particular importance for the security or defense of the state; impose an obligation on natural persons and juridical persons running agricultural holdings to perform services consisting in deliveries to specific entities of agri-food products and on the cultivation of specific plant species and animal husbandry; introduce the lease of premises and buildings on the basis of the administrative decision on the allocation to all premises and buildings, and in justified cases also to hold people to a dwelling or a building; enter the occupation of property necessary for the Armed Forces or defense.

The above mentioned restrictions on freedom and human and civil rights established by the President of the Republic of Poland in the Regulation are introduced and applied by way of ordinances of the Council of Ministers or decisions of government administration bodies. These ordinances specify the detailed procedure and methods as well as the area, subjective and objective scope of introducing and applying restrictions on freedoms and human and civil rights, taking into account to the extent possible the minimization of individual and social nuisances resulting from the application of these restrictions. During martial law it may also be introduced: total or partial ban or limitation of transport of persons and goods in road, rail, air, sea and inland waterway transport; total or partial ban on flights of Polish and foreign aircraft over land territory and territorial sea of the Republic of Poland; total or partial prohibition or restriction of the movement of Polish and foreign vessels in internal sea waters, in the territorial sea and on inland

¹³ Article 24 (1) of the Martial Law Act.

waterways; total or partial prohibition or restriction of all vehicles on public roads; the obligation for carriers to carry transport for the purposes of national defense and security¹⁴.

The regulations referred to detailed procedures and methods and the territorial, subjective and objective scope of the introduction and application of restrictions on freedom and human and civil rights, taking into account to the extent possible to minimize individual and social burden resulting from the application of these limitations. In turn based on the provision of art. 27 (1) of the Martial Law Act during martial law, means of road, rail and air transport as well as sea and inland waterway vessels can be taken or requisitioned for the state defense needs. You can also: close or restrict personal and freight traffic through border crossings; introduce specific rules for issuing documents entitling Polish citizens to cross the state border; introduce specific rules for issuing documents entitling foreigners to cross the state border and stay on the territory of the Republic of Poland¹⁵.

The above mentioned restrictions on freedom and human and civil rights established by the President of the Republic of Poland in the ordinance introduce and apply, by way of regulation, the minister competent for internal affairs, in agreement with the minister competent for foreign affairs and the Minister of National Defense, taking into account, to the extent possible, the minimization of individual and social nuisance resulting from the application of these restrictions.

Additionally, pursuant to the provision of art. 29 (1) of the Act on Martial Law during martial law may be introduced a general obligation to perform work by persons who have completed 16 years of age, and have not exceeded 65 years of age and are capable of performing work due to their state of health and personal and family conditions.

This restriction is introduced by the Council of Ministers, by way of a regulation, defining the categories of persons not subject to a general obligation to perform work, and the mode and conditions for transferring people to work in other localities, including minimizing the nuisance caused by these restrictions.

It should also be noted that on the basis of the provision of article 30 of the Martial Law Act during martial law, editors of the head of daily newspapers and broadcasters of radio and television programs are obliged, at the request of public

¹⁴ Article 26 (1) of the Martial Law Act.

¹⁵ Article 28 (1) of the Act on Martial Law.

administration authorities, to publish, publish or post messages, decisions and decisions of these authorities related to state defense and citizens' safety. The regulations described above indicate restrictions on the use of constitutional freedoms and rights that may be established during martial law. It can therefore be concluded that in connection with the imposition of martial law, the use of both personal freedoms and rights, freedoms and political rights as well as economic, social and cultural freedoms and rights may be limited. Their scope may also be the widest possible due to the fact that martial law entails the greatest special threats to the state. During the martial law period it is possible to limit the freedom of the media (Article 14 of the Constitution of the Republic of Poland). The protection of property (Article 21 of the Constitution of the Republic of Poland) can also have significant limitations. Economic freedom (Article 22 of the Constitution of the Republic of Poland) may also be limited during martial law. There may also be a situation where the secrecy of communication is restricted (Article 49 of the Constitution of the Republic of Poland) and the inviolability of an apartment (Article 50 of the Constitution of the Republic of Poland). Detriment may also experience freedom of movement, freedom of choice of place of residence and residence (Article 52 of the Constitution of the Republic of Poland). The freedom to obtain and disseminate information (Article 54 of the Constitution of the Republic of Poland) may also be limited. Within the scope of freedom and political rights, the following may be limited: freedom of assembly (Article 57 of the Constitution of the Republic of Poland), freedom of association (Article 58 of the Constitution of the Republic of Poland), right to information (Article 61 of the Constitution of the Republic of Poland), property and property rights (Article 64 Constitution of the Republic of Poland), freedom to choose and practice a profession (Article 65 of the Constitution of the Republic of Poland) and the right to safe and healthy working conditions (Article 66 (1) of the Constitution of the Republic of Poland).

Based on the provision of art. 3 (2) of the Act of 21 June 2002 on the state of emergency¹⁶, the regulation on the introduction of the state of emergency specifies the reasons for the introduction, duration and the area in which the state of emergency is introduced, and, to the extent permitted by this Act, types of restrictions on freedom and human and civil rights. The types of restrictions on freedom and human and civil rights should correspond to the nature and

¹⁶ (Dz. U. 2002 No 113, item 985 as amended).

intensity of the threats constituting the reasons for the introduction of the state of emergency, as well as to ensure effective restoration of the normal functioning of the state. During the state of emergency may be suspended the right to: organize and conduct all kinds of gatherings; organizing and conducting mass events and artistic and entertainment events conducted as part of cultural activities, not being mass events; workers' strikes and other forms of protest in relation to specific categories of employees or in specific areas; strikes and non-strikes forms of farmers' protest actions; protest actions of students organized by student self-governments, associations or organizations; association.

As regards the restriction of the right of association, a ban may be imposed on the creation and registration of new associations, political parties, trade unions, farmers' socio-professional organizations, employers' organizations, civic movements and other voluntary associations and foundations; order the temporary abandonment of registered associations, political parties, trade unions, socio-professional organizations of farmers, employers' organizations, civic movements and other voluntary associations and foundations whose activities may increase the threat to the constitutional state, security of citizens or public order.

Nevertheless, the above regulations do not apply to assemblies organized by churches and other religious associations and religious organizations operating within temples, church buildings, other rooms used for organizing and public worship, as well as assemblies organized by state organs or local self-government bodies. Based on the provision of art. 17 (1) of the state of emergency at the time of the state of emergency may be an isolated person over 18 who has reasonable suspicion that while remaining at liberty will conduct activities threatening the constitutional state system, citizens' security or public order or when isolation is necessary to prevent committing a punishable offense or preventing an escape after committing it. A person who is over 17 years old may also be isolated if the previous warning conversation was unsuccessful. Isolation takes place on the basis of the decision of the voivode competent for the place of permanent or temporary residence of an isolated person and is performed by the competent provincial police officer, by way of detaining the person and compulsory bringing to the detention center subordinate to the Minister of Justice. The provisions of the Executive Penal Code regarding the rights and obligations of pre-trial detainees, execution of temporary detention and penitentiary supervision shall apply accordingly to the stay of detached persons in detention centers. In addition, in the area of the state

of emergency, a person who is 18 years of age or in a public place may be required to have an identity card or other identity document, and a school ID for a learner who is under 18 years of age¹⁷.

Due to the provisions of the said Act, prohibitions or prohibitions may also be imposed: staying or leaving marked places, objects and areas within a set time; obtaining permission from public administration authorities to change their place of permanent and temporary residence; to notify the authorities of the population or police records of arrival to a specific place within a specified period; preservation of the appearance or other characteristics of specific places, facilities or areas using technical means. During the state of emergency, at the request of the prosecution, police, Internal Security Agency, Border Guard, Military Police or Military Counter-intelligence Service, a person aged 17 or older is obliged to take part in a warning conversation¹⁸. If the person called for a warning call does not voluntarily report to the indicated place and the fact of receiving the summons is not in doubt, it may be forcibly brought by the requesting authority¹⁹. According to the provision of article 20 (1) of the Act on the state of emergency during this extraordinary state may be introduced: preventive censorship of social media including press materials within the meaning of the Act of 26 January 1984 – Press Law; control of the content of parcels, letters, parcels and remittances handed over as part of universal postal services or courier services; control of the content of telecommunications correspondence and telephone conversations or signals transmitted in telecommunications networks; broadcasting signals that prevent the transmission or reception of radio, television or telecommunications transmissions or networks, the content of which may increase the threat to the constitutional state, security of citizens or public order.

The function of the authorities of censorship and control is exercised by the competent voivodes, who can order public administration authorities operating in the area of the voivodship to perform technical activities necessary to conduct censorship or control. In addition, the censorship and control bodies indicated are entitled to retain in whole or in part publications, postal and courier mail and telecommunications correspondence, as well as to terminate telephone conversations and transmission of signals sent in telecommunications networks, if

¹⁷ Article 18 (1) of the Emergency Act.

¹⁸ Article 19 (1) of the Emergency Act.

¹⁹ Article 19 (3) of the Emergency Act.

their content or content may increase the threat of the constitutional state system, security of citizens or public order. Preventive censorship does not cover media of public communication belonging to churches and other religious organizations, which are sources of information about religion and serve to fulfill religious functions²⁰. Next, it should be pointed out that during the state of emergency restrictions on freedom and human and civil rights may be introduced in the scope of: access to consumer goods, by total or partial rationing of supply to the population; the freedom of contractual agreement between parties to the contract, by prohibiting periodically raising prices for goods or services of a certain type or ordering the use of prices set on goods or services of fundamental importance to the costs of consumer maintenance; freedom of economic activity, by ordering temporary discontinuation of a particular type of business or establishing an obligation to obtain a permit to start a particular type of business; educational activity, through periodic suspension of classes in schools, including universities, except for schools of clergy and clerical seminaries; trading in domestic means of payment, foreign exchange transactions and bureau de change; road, rail and air transport as well as in the movement of vessels in internal sea waters and in the territorial sea as well as on inland waterways; operation of communication systems and telecommunications and postal activities, by ordering the exclusion of communication devices or suspension of service provision for a definite period, and also by ordering immediate deposit of radio and television transmitting and transmitting-receiving devices to the deposit of the competent governmental administration or establishing another way of securing them before being used in a manner threatening the constitutional state system, the security of citizens or public order; the right to possess firearms, ammunition and explosives, and other types of weapons or specific objects, by ordering immediate deposit of the competent government administration body or prohibiting the wearing; access to public information. The ordinances specify the detailed procedure and methods as well as the area, subjective and objective scope of introducing and applying restrictions on freedoms and human and civil rights, taking into account to the extent possible the minimization of individual and social nuisances resulting from the application of these restrictions. As in the case of martial law, the introduction of the state of emergency involves a special threat to the state, which authorizes the introduction of restrictions on the use of constitutional freedoms and rights.

²⁰ Article 20 (7) of the Emergency Act.

Therefore, it can be pointed out that due to the introduction of the state of emergency, the use of personal freedoms, personal rights, freedoms and political rights as well as economic, social and cultural freedoms and rights may be limited. A similar situation occurs during martial law. Their scope may also be relatively wide and comparable to that which may take place during martial law. During the state of emergency, it is possible to limit: media freedom (Article 14 of the Constitution of the Republic of Poland); protection of property (Article 21 of the Constitution of the Republic of Poland), economic freedom (Article 22 of the Constitution of the Republic of Poland), protection of the secrets of communication (Article 49 of the Constitution of the Republic of Poland), inviolability and personal liberty (Article 41 of the Constitution of the Republic of Poland), inviolability of an apartment (Article 50 of the Constitution RP), freedom of movement, freedom of choice of place of residence and residence (Article 52 of the Constitution of the Republic of Poland), freedom to obtain and disseminate information (Article 54 of the Constitution of the Republic of Poland), freedom of assembly (Article 57 of the Constitution of the Republic of Poland), freedom of association (art. 58 of the Polish Constitution), the right to information (Article 61 of the Constitution of the Republic of Poland), property and property rights (Article 64 of the Constitution of the Republic of Poland), freedom of choice and profession (Article 65 of the Constitution of the Republic of Poland) and the right to safe and healthy working conditions (Article 66 (1) of the Constitution of the Republic of Poland). Based on the provision of article 21 (1) of the Act of 18 April 2002 on the state of natural disasters²¹ restricting freedoms and human and civil rights during the state of natural disaster may consist in: suspension of the activities of certain entrepreneurs; order or prohibition to conduct a specific type of business; ordering the employer to delegate employees to the disposal of the governing body for activities aimed at preventing or removing the consequences of a natural disaster; total or partial rationing of the supply of certain types of articles; a ban on periodic price increases for specific types of goods or services; an order to use fixed prices for goods or services of fundamental importance to the costs of consumer maintenance; the obligation to undergo medical examination, treatment, protective vaccinations and other preventive measures and treatments necessary to fight infectious diseases and the effects of chemical and radioactive contamination; the obligation to quarantine; the obligation to use plant protection products or

²¹ (Dz. U. 2002 No 62, item 558 as amended).

other preventive measures necessary for the control of organisms that are harmful to humans, animals or plants; the obligation to use specific measures to ensure environmental protection; the obligation to use the means or treatments necessary to control animal infectious diseases; obligation to empty or secure dwellings or other premises; making forced demolition and demolition of buildings or other construction objects or parts thereof; an evacuation order within a set time from specific places, areas and objects; order or prohibit staying in certain places and facilities and in specific areas; prohibition of organizing or conducting mass events; order or prohibition of a particular way of moving; using, without the consent of the owner or other authorized person, real estate and movables; prohibition to conduct a strike in relation to certain categories of employees or in specific fields; limiting or departing from certain health and safety at work rules, however not directly endangering the employee's life or health; performing personal and material benefits. The limitations referred to above in relation to persons employed by the employer against whom an order to conduct a specific type of business was issued may consist in: changing the system, dimension and working time distribution, including extending the reference period to twelve months, on the terms specified in the Labor Code; obligation to work on Sundays, holidays and non-working days resulting from the distribution of working time in a five-day working week, including extending the reference period to twelve months, on the terms set out in the Labor Code; entrusting the employee with performing a job other than that resulting from the employment relationship established; in this case, the employee retains the right to the previous remuneration, calculated in accordance with the rules applicable to the calculation of remuneration for the period of annual leave. Based on the provision of article 22 (1) of the Act on the State of Natural Disaster, it is possible to introduce the obligation of personal and material benefits consisting of: providing first aid to persons who have suffered from accidents; participation in the rescue operation or other tasks assigned by the person heading the rescue operation; performing specific works; putting into use of owned real estate or movable property; making rooms available to evacuees; using the property in a certain manner or within a specified scope; acceptance for storing and guarding the property of injured or evacuated persons; the protection of endangered animals, and in particular the supply of feed and shelter; protection of endangered plants or seeds; performing work; securing own sources of drinking water and foodstuffs against their contamination, contamination or infection, as well as making them available to the needs of evacuees or victims, in the manner

indicated by the authority imposing the benefit; securing endangered cultural goods. In addition, pursuant to the provision of article 24 (1) of the Act on the state of natural disaster, in order to improve the movement of transport means necessary for carrying out rescue operations, restrictions may be imposed in road, rail and air transport as well as in the movement of vessels on inland waterways, internal sea waters and the territorial sea. In order to provide communication for the needs of rescue operations, limitations may be introduced in the performance of postal universal services or courier services, as well as restrictions on the operation of radio transmitting or transmitting and receiving devices and in the provision of telecommunications services are set out in separate regulations²². Editor-in-chief of daily newspapers and broadcasters of radio and television programs are obliged, at the request of the minister, voivods, starosts, mayors (mayors, city presidents) or proxies, to publish or post messages of these organs free of charge related to actions to prevent the effects of a natural disaster or their removal (Article 26 of the Act on the State of Natural Disaster).

In the situation of introducing a state of natural disaster, it is possible, as in the case of martial law or state of emergency, to limit the use of constitutional freedoms and rights. Compared with the first two emergency states, their range is significantly limited. The provisions of the Constitution of the Republic of Poland indicate a closed catalog of these freedoms and rights. And so on the basis of the provision of article 233 (3) of the Constitution of the Republic of Poland during the state of natural disaster may be limited: freedom of economic activity (Article 22 of the Constitution of the Republic of Poland), personal freedom (Article 41 (1, 3, 5) of the Constitution of the Republic of Poland), inviolability of the flat (Article 50 of the Constitution of the Republic of Poland), freedom of movement and stay in the territory of the Republic of Poland (Article 52 (1) of the Constitution of the Republic of Poland), the right to strike (Article 59 (3) of the Constitution of the Republic of Poland), property rights (Article 65 (1) of the Constitution of the Republic of Poland), the right to secure and hygienic working conditions (Article 66 (1) of the Constitution of the Republic of Poland) and the right to rest (Article 66 (2) of the Constitution of the Republic of Poland).

As follows from the presented analysis regarding the possibility of restricting the use of constitutional freedoms and rights, their scope depends on the situation in which the emergency situation will arise. The greatest possibilities in this

²² Article 25 (1-2) Act on the state of natural disaster.

respect exist in the case of the introduction of martial law and state of emergency. In such cases, the provisions of the Basic Law indicate what basic freedoms and rights cannot be limited. All others can be limited. However, in the situation of introducing the state of a disaster, the provisions of the Constitution indicate which freedoms and rights can be limited, which means that others can not be subject to such restrictions. The introduction of a negative (with reference to martial law and state of emergency) and positive (with reference to the state of natural disaster) to the content of the Constitution of the Republic of Poland defining the freedoms and rights, the use of which may be limited should be assessed positively. Also the catalog of indicated freedoms and rights deserves approval. In addition, it should be recognized that the manner of regulating issues related to limiting the opportunities to enjoy freedom and human and civil rights in the legal system of the Republic of Poland is consistent with both international standards in this area, as well as the principle of a democratic state ruled by law.

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