ISSN 2029-1701
ISSN 2335-2035 (Online)

Mokslinių straipsnių rinkinys
VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA
PUBLIC SECURITY AND PUBLIC ORDER
2019 (22)
Scientific articles

PROTECTION OF INDIVIDUAL RIGHTS AND FREEDOMS DURING EXTRAORDINARY STATES- SELECTED ISSUES

Paweł Śmiałek*

**University of Warmia and Mazury in Olsztyn,*
Department of the Constitutional Law,
Aleja Warszawska 98, 11-041 Olsztyn, Poland
e-mail: smialekolsztyn@gmail.com

DOI: 10.13165/PSPO-19-22-13

Abstract: This article aims to discuss selected problems related to the protection of individual rights and freedoms during the period of emergency. In his letter, the author refers to regulations contained in the European Union law and the European Convention on Human Rights. Then, individual solutions adopted in such countries as Great Britain, France, Germany, Lithuania and Poland are discussed. The author puts particular emphasis on the assessment of regulations in Poland and Lithuania, bearing in mind the principle of propetionality emphasized in the case law of the European Court of Human Rights in Strasbourg.

Keywords: human rights, rights and freedoms of humans, extraordinary states, non-discrimination law.

INTRODUCTION

The aim of this article is to discuss the institution of extraordinary states in selected European Union countries. With special regard to Lithuania and Poland. The author will focus primarily on the premises of the introduction of extraordinary states and the storytelling institution aimed at protecting the rights and freedoms of the individual in the period of their particular threat. The study is a peculiar outline constituting a point for further consideration and discussion of an important issue.

Methodology of the Research. In his research, the author used primarily the method of studying literature related to the subject matter in the form of commentaries, monographs with particular reference to the jurisprudence of the European Court of Human Rights and constitutional courts.

THE DEFINITION OF EXTRAORIDUNARY STATE AND ITS REGULATION IN EUROPEAN CONVENTION OF HUMAN RIGHTS AND UE LAW

A state of emergency derives from a governmental declaration made in response to an extraordinary situation posing a fundamental threat to the country[1]. The declaration may

[1] Born H., Beutler I., Wetzling T., Backgrounder Security Sector Governance and Reform – States of Emergency, Law D., Power J. (Eds.). (online). [cit. 25.5.2019]. Available at: https://www.dcaf.ch/publications/backgrounders.

suspend certain normal functions of government, may alert citizens to alter their normal behaviour, or may authorise government agencies to implement emergency preparedness plans as well as to limit or suspend civil liberties and human rights. The need to declare a state of emergency may arise from situations as diverse as an armed action against the state by internal or external elements, a natural disaster, civil unrest, an epidemic, a financial or economic crisis or a general strike.

The introduction of an emergency state in a given country is closely related to the matter of protection of individual rights. First of all, this matter is regulated by the European Convention on Human Rights (hereinafter: ECHR)[2]. According to the art. 15 of ECHR In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law[3]. This can only happen exceptionally and in accordance with the procedure set out in paragraph 3 of this article[4]. Not all rights and freedoms guaranteed in the Convention may be subject to derogation. From art. 15 par. 2 of the Convention, it appears that this cannot be done with regard to art. 2 Convention (right to life), except for deaths resulting from lawful hostilities, art. 3 Convention (prohibition of torture), art. 4 par. 1 of the Convention (prohibition of slavery and servitude) and art. 7 of the Convention (prohibition of punishment without a legal basis), as well as art. 4 par. 3 of Protocol No. 7[5] in connection with the *ne bis in idem* principle.

From this perspective, the correct understanding of the concept of "public danger" becomes particularly important. Within the meaning of art. 15 ECHR "public danger" should be understood, in accordance with the natural and ordinary understanding of this concept, „an

[2] The Convention for the Protection of Human Rights and Fundamental Freedoms from 4 November 1950. (online). [cit. 25.5. 2019]. Available at: *https://ec.europa.eu/digital-agenda/sites/.../Convention_ENG.pdf.*
[3] Nowicki M.A., Remarks to the art. 15 of the Convention, In Nowicki M.A. (Eds.). European Convention on Human Rights. Commentary, Warsaw, 2017.
[4] According to this article: Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.
[5] According to this article: No derogations from this Article shall be made under article 15 of the Convetion. Other two paragrphs of this article state that *No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.* The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

emergency situation, crisis or danger that affects the entire population and is a threat to the organization of life of the state-forming community"[6]. In any case, the state must show why it considers that the ordinary legal means at its disposal would not be effective in this situation[7]. It is for the Court to assess whether the State has not gone beyond the 'strictly relevant requirements'[8]. The freedom of the national authorities is therefore accompanied by the supervision of the ECHR. However, the Court must take due account of such relevant factors as the nature of the rights with a derogation, the circumstances and the duration of the situation considered to be a public risk[9].

In European Union law, this issue also finds its normative sources, but it seems that the Community only designates general directives of conduct across member states. Article 222 of the Treaty on the Functioning of the European Union[10] states that The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster[11]. In the same situation, assistance may also be granted by the Member States at the request of the state concerned. In the event of a terrorist attack or a natural disaster or a natural disaster, the EU mobilizes all available instruments, including military means made available to it by the Member States[12]. Against the background of the requirements set for the EU, obligations of Member States in a similar situation are more modest. The scope of this assistance is left to the choice of the states themselves. In the declaration attached to the final act No. 37, it has been clearly stated that none of the provisions of art. 222 is intended to infringe the right of other Member States to choose the most appropriate means to fulfill their duty of solidarity in relation to a state affected by a terrorist attack or a natural or man-made disaster[13]. Member States' activities are coordinated in the Council. However, the TFUE does not regulate the matter of protection of individual rights and

[6] Verdict of ECHR in case Lawless v. Ireland from 1 July 1961, case no. 332/57, § 28.
[7] Verdict of ECHR in case Aksoy v. Turkey, from 18 December 1996, case no. 21987/93.
[8] Nowicki M.A., Remarks to the art. 15 of the Convention, In Nowicki M.A. (Eds.). European Convention on Human Rights. Commentary, Warsaw, 2017.
[9] Verdict of ECHR in case Brannigan and McBride v. Great Britain from 26 may 1993, case nos. 14533/89 and 14544/89.
[10] Treaty on the Functioning of the European Union from 25 march 1957 (*Official Journal C 326 , 26/10/2012 P. 0001 – 0390).*
[11] Further this article state that: The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to: (a) — prevent the terrorist threat in the territory of the Member States;— protect democratic institutions and the civilian population from any terrorist attack; — assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.
[12] Krzan B., Remarks to the art. 222 of TFUE, In Kowalik-Bańczyk K., Szwarc-Kuczer M., Wróbel A. (Eds.). European Convention on Human Rights. Commentary. WKP, 2012.
[13]Ibidem.

freedoms during the period of emergency states in individual states. Leaving States with wide discretion.

PROTECTION OF THE INDIVIDUAL"S RIGHTS AND FREEDOMS IN SELECTED COUNTRIES OF THE EUROPEAN UNION DURING THE EXTRAORDINARY STATE

However, this issue is raised on the basis of the national law of individual European countries. There are several models for regulating the problem of extraordinary states. In the Anglo-Saxon countries, above all in Great Britain, the institution of martial law developed over the centuries. It is not clearly regulated in the statutory law. Which raises a lot of controversies. According to Robert Cover martial law attempts at one and the same time to do two things. It attempts to be "jurisgenerative"—to constitute a field of legal meaning, a space within which public officials are legally authorized to act as they see fit to restore order—and to be "jurispathic"—to kill off, albeit temporarily, a particular field of legal meaning, the narrative of the rule of law"[14]. Martial law is when a state imposes direct military control of civilian functions usually run by government. It may be declared by the parliament or government, as well as by a competent local official or military commander. Powers that can be used under the legislation include "any provision which the person making the regulations is satisfied is appropriate" to protect human life, health and safety, and to protect or restore property and supplies of money, food, water, energy or fuel"[15]. During the emergency of state rights and freedoms of individuals are suspended within the limits set by the "necessity" premise[16]. One cannot ignore the fact that the introduction of an emergency state does not imply the derogation of the Human Rights Act from 1998[17]. Understanding of the premise of necessity will be discussed in more detail later in this article, because it first of all requires referring to the jurisprudence of the European Court of Human Rights.

[14]Cover R., "Nomos and Narrative" in Martha Minow, In Ryan M., Sarat A (Eds.). Narrative, Violence, and the Law: The Essays of Robert Cover, Michigan University Press, 1998, 1836-1859.
[15] See art. 1 of the Civil Contingencies Act from the 18 November 2004. (online). [cit. 23.5.2019]. Available at: https://www.legislation.gov.uk/ukpga/2004/36/contents.
[16]Prokop K., Modele stanu nadzwyczajnego (Emergency models), Białystok, 2012, 151.
[17]Human Rights Act from the 9 November 1998, (online). [cit. 23.5.2019]. Available at: https://www.legislation.gov.uk/ukpga/1998/42/contents. In particular, the Act makes it unlawful for any public body to act in a way which is incompatible with the Convention, unless the wording of any other primary legislation provides no other choice. It also requires the judiciary (including tribunals) to take account of any decisions, judgment or opinion of the European Court of Human Rights, and to interpret legislation, as far as possible, in a way which is compatible with Convention rights.

In the Federal Republic of Germany, this matter is governed by Chapter Xa of the Constitution[18], added in the 1968. Martial law, referred to differently as *Verteidigungsfall*, is introduced in principle as a result of the Bundestag finding, with the consent of the Bundesrat, that the area of the state has been armed with attack or that such an attack directly threatens. According to the art. 115a: any determination that the federal territory is under attack by armed force or imminently threatened with such an attack (state of defense) shall be made by the Bundestag with the consent of the Bundesrat. Such determination shall be made on application of the Federal Government and shall require a two-thirds majority of the votes cast, which shall include at least a majority of the Members of the Bundestag. The basic effect of the introduction of an emergency state in Germany is the transition of the takeover of sovereignty over the armed forces to the chancellor. An interesting solution is to determine the legal status of the Federal Constitutional Court. According to the art. 115G, Neither the constitutional status nor the performance of the constitutional functions of the Federal Constitutional Court or its judges may be impaired. The law governing the Federal Constitutional Court may be amended by a law enacted by the Joint Committee only insofar as the Federal Constitutional Court agrees is necessary to ensure that it can continue to perform its functions. However, the subject of protection of individual rights during the emergency state is not mentioned.

Introduction of extrodinary state in France grants special powers to the executive branch in case of exceptional circumstances. Three main provisions concern various kinds of states of emergency in France: two of those provisions stem from the Constitution of 1958, and the third from a statute. Article 16 of the Constitution provides "exceptional powers" (*Pouvoirs exceptionnels*) to the president in times of acute crisis. When the institutions of the Republic, the independence of the nation, the integrity of its territory, or the fulfillment of its international commitments are under grave and immediate threat and when the proper functioning of the constitutional governmental authorities is interrupted, the President of the Republic shall take the measures demanded by these circumstances after official consultation with the Prime Minister, the presidents of the Assemblies, and the Constitutional Council. He shall inform the nation of these measures by a message. Article 36 of the Constitution is concerned with the state of siege (in French), which can be decreed by the President in the Council of Ministers for a period of twelve days which can only be extended with the approval of the Parliament. A state of siege may be declared in case of an "imminent peril resulting from a foreign war [*guerre*

[18]Basic Law for the Federal Republic of Germany from 8 may 1949. (online). [cit. 23.5.2019]. Available at: https://www.bundesregierung.de/breg-en/chancellor/basic-law-470510.

étrangère] or an armed insurrection (*une insurrection à main armée*). Article 36 of the Constitution is concerned with the state of siege which can be decreed by the President in the Council of Ministers for a period of twelve days which can only be extended with the approval of the Parliament. A state of siege may be declared in case of an "imminent peril resulting from a foreign war [*guerre étrangère*] or armed insurrection (une insurrection à main armée) In the event of its introduction, the right of access to the competent court is suspended, as the competence of common courts in matters of state security is transferred to military courts, regardless of whether they are soldiers or civilians[19]. Fundamental liberties may be restricted during that time, such as the right of association, legalization of searches in private places day and night, the power to expel people who have been condemned for common law matters or people who do not have the right of residence in the territorry. The introduction of the extrodinary state, however, does not allow to limit basic rights such as dignity, freedom, equality, or the prohibition of discrimination, irrespective of a certain legal characteristic.

In Lithuania the state of emergency is also regulated in the Constitution[20]. According to the art. 84 p. 17 of the Constitution : The President shall declare a state of emergency according to the procedure and in cases established by law and present this decision for approval at the next sitting of the Seimas. The constitutional legislator then emphasizes that when a threat arises to the constitutional system or social peace in the State, the Seimas may declare a state of emergency throughout the territory of the State or in any part thereof. The period of the state of emergency shall not exceed six months. In cases of urgency, between sessions of the Seimas, the President of the Republic shall have the right to adopt a decision on the state of emergency and convene an extraordinary session of the Seimas for the consideration of this issue. The Seimas shall approve or overrule the decision of the President of the Republic. The state of emergency shall be regulated by law (art. 144 of the Constitution). The matter of protection of the individual's rights and freedoms is regulated, however, in art. 145 of the Constitution, which introduces an absolute prohibition of derogations from certain rights even during the state of emergency. At the same time Constitution definies rights and freedoms that can be temporarily limited. The right to privacy, the confidentiality of correspondence, the right to inviolability of the place of residence, the right to freedom of expression and expression, the right to free movement, right to freely forms societies, political parties, and associations, the right to create

[19]Prokop K., Modele stanu nadzwyczajnego (Emergency models), Białystok, 2012, 151.
[20] The Constitution of the Republic of Lithuania from 25 October 1992. (online). [cit. 26.5.2019]. Available at: http://www.servat.unibe.ch/icl/lh00000_.html.

and participate in peaceful unarmed meetings may be restricted.[21].However, it should be noted that according to article 48 of the Constitution -forced labour shall be prohibited- but „military service or alternative service performed in place of military service as well as citizens' work in time of war, natural disaster, epidemics, or other extreme cases shall not be considered forced labour". Besides, in the Constitution (art 111) the creation of special (with extraordinary powers) courts is specifically prohibited, with the exception of martial law. Those thing could be done by suspending the validity of certain norms of respective laws. The Constitution does not provide for any other cases of suspension of the law.

It should be noted that in the in the jurisprudence of the Lithuanian Constitutional Court the view was expressed that „the validity of restrictions of a fundamental right or freedom should be assessed by the criteria of common sense and those of evident necessity, it must be in compliance with the concept and requirements of justice and the possibilities and conditions of its restriction established in the Constitution"[22]. Any restriction of fundamental rights and freedoms is to be linked with the rational relation guaranteeing that by the limitations the essence of respective human right be not violated[23].

PROTECTION OF HUMAN RIGHTS IN POLAND DURING THE EXTRAORDINARY STATES

In Poland, the matter related to the establishment of extraordinary states has also been broadly regulated in the Constitution[24] . According to the art. 228 part 1 of the Constitution in situations of particular danger, if ordinary constitutional measures are inadequate, any of the following appropriate extraordinary measures may be introduced: martial law, a state of emergency or a state of natural disaster. Part 2 of the same article states that Extraordinary measures may be introduced only by regulation, issued upon the basis of statute, and which shall additionally require to be publicized. Interesingly enough in part constitutional legislator state that the principles for activity by organs of public authority as well as the degree to which

[21] The freedom to have convictions may not be restricted in any way, while the freedom to express convictions may be restricted under the procedure provided for by the law and only in cases when it is necessary to protect the values pointed out in part 3 of art 25 of the Constitution, i.e., the health, honour and dignity, private life and morals of the person, or the constitutional order.
[22] The Lithuanian Constitutional Court Ruling from 13 February 1997, case no. 6/96-10/96.
[23]Greicius M., States of emergency and fundamental rights : Lithuania Perspective, Comparing Constitutional Adjudication A Summer School on Comparative Interpretation of European Constitutional Jurisprudence, (online). [cit. 27.5.2019]. Available at: http://www.jus.unitn.it/cocoa/papers/PAPERS%204TH%20PDF/Emergency%20Lithuania%20Greicius.pdf.
[24]Constitution of the Republic of Poland of April 2, 1997 (Dz. U. of 1997, no. 78, item 483.).

the freedoms and rights of persons and citizens may be subject to limitation for the duration of a period requiring any extraordinary measures shall be established by statute. From the perspective of the discussed issue, the analysis of art is particularly interesting. 233 of the Constitution. Above mentioned article in part 1 states that: The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, par.4 (human treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children). The consequence of recognition of these freedoms and rights as not subject to restrictions due to martial law or state of emergency is not the prohibition of any limitation[25]. The ordinary rules for limiting these rights and freedoms provided for in Article 31 par. 3[26] of the Constitution and, possibly, the rules provided for in specific provisions regarding individual freedoms and rights (eg Article 53 (5) of the Constitution[27]) . However, it is unacceptable to violate the essence of those freedoms and rights.

From the field of view, however, it should not be lost that art. 233 in par. 2 has significant legislative defects that raise serious doubts in the interpretation process. According to art. 233 par. 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 lack of it, social origin, birth and property. This is undoubtedly a special regulation for art. 32 par. 2 of the Constitution of the Republic of Poland prohibiting discrimination irrespective of a certain legal jurisdiction[28]. As B. Banaszak points out, this is a solution similar to the solutions adopted on the ground of the relevant provisions binding on Poland treaties (Article 4 point 1 of the

[25] Safjan M. , Bosek L., Remarks to the art. 233 of the Constitution. In Safjan M., Bosek. L. (Eds.). Constitution of the Republic of Poland. Commentary, Warsaw, 2016, Legalis.
[26] According to the art. 31 par. 3 of the Constitution Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.
[27]According to the art. 53 par. 5 of the Constitution: The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others.
[28]Safjan M. , Bosek L., Remarks to the art. 233 of the Constitution. In Safjan M., Bosek. L. (Eds.). Constitution of the Republic of Poland. Commentary, Warsaw, 2016, Legalis.

ICCPR)[29]. In the author's opinion, however, this solution can not be regarded as fully correct. As noted by M. Safjan and L. Bosek, the prohibition of discrimination under art. 233 par. 2 of the Constitution of the Republic of Poland is generally applicable to the restriction of freedoms and rights under martial law and the state of emergency. Therefore, it concerns both freedoms and rights "derogable" as well as freedoms and rights indicated in art. 233 par. 1 of the Constitution of the Republic of Poland, which may be limited only on general principles defined primarily in art. 31 par. 3 of the Constitution of the Republic of Poland[30]. However, it cannot be forgotten that in every case of the legislator's interference it becomes necessary to demonstrate that the protected rights and rights "should not be noticeably lower than the rights and freedoms in which the interference occurs", which is tantamount to adopting the principle according to which "test proportionality would amount in this approach to indicating a bundle of rights (freedoms) that would be protected by entering into other constitutional rights (freedoms)."

The author fully shares the view presented by Mariusz Jabłoński that "The author fully shares the view presented by Mariusz Jabłoński that "The catalog of freedoms and personal rights adopted in the Constitution of the Republic of Poland is not complete, for example the omission of the cardinal law of the right to legal personality or freedom from slavery and servitude. The assumption that legalization could be legalized (even statutory) of suspension or limitation seems to be a misunderstanding: regardless of the situation and the intensification of threats (dangers), it would be unacceptable to act that respects the kind of actions taken by the authorities public or other entities or people"[31]. As Bartosz Opaliński points out, "even absolute freedoms and rights (*ius cogens*), which are not mentioned in Article 233 (1) of the Constitution, during martial law gain a relative character (*ius dispositivum*)"[32]. This is, in the author's opinion, an approach contrary to the directives resulting from the provisions of the European Convention on Human Rights. This view is not fully approved in doctrine. K. Complak emphasizes that "[constitution] when determining the scope of freedoms and rights that can not be restricted during the course of emergency states, it extends them beyond a reasonable measure. The

[29] Banaszak B, Remarks to the art. 233 of the Polish Constitution. In B. Banaszak (Eds.). Constitution of the Republic of Poland. Commentary, Warsaw, 2012, Legalis.
[30] Safjan M. , Bosek L., Remarks to the art. 233 of the Constitution. In Safjan M., Bosek. L. (Eds.). Constituion of the Republic of Poland. Commentary, Warsaw, 2016, Legalis.
[31] Jabłoński M., Ograniczenie konstytucyjnych wolności i praw osobistych w czasie trwania stanów nadzwyczajnych (Limitation of constitutional freedoms and personal rights during emergency states), Przegląd Prawa i Administracji 2016, 106, 180-192.
[32] Opaliński B, Stan wojenny we współczesnym porządku prawnym (Martial law in the modern legal order), Przegląd Prawa Publicznego 2011, 7-8, 65-86.

essence of all emergency states is the possibility of depriving people of freedom only on the basis of suspicion. Such decisions are decided by the organs of the executive branch. Without this possibility, overcoming the state of emergency is impossible or significantly hampered. Here, it is enough to quote the US Constitution, which allows for the possibility of suspending the judicial control of arrest during the rebellion or invasion. This is a manifestation of the general principle expressed in the Latin inter armist silent leges bonus"[33].

However, it does not seem that the establishment of a closed catalog of rights legally protected against discrimination was a correct solution, both in fact and in law. The list of reasons for discrimination will suggest that there is no protection of sexual orientation there, and moreover, very doubtful concepts have been used, for example: birth, race. It can therefore be concluded that discrimination against people was allowed because of nationality, political beliefs lifestyle, especially in the sexual sphere[34]. This is particularly wrongful considering the wording of art. 32 par. 2 of the Constitution, as well as the fact that equality, besides dignity and freedom, is a fundamental social value. It should therefore be subject to special protection, regardless of the existing situation in the country. An analogous approach is contained in art. 14 ECHR. The order for equal treatment (referred to as the prohibition of discrimination) is here referred to as "the exercise of rights and freedoms listed in the Convention". Whereas Protocol No. 12 (entered into force in 2005, but not yet ratified by Poland), adopted a general prohibition of discrimination and referred it to "every entitlement established by law", both by national and international law. There are no axiological and equity grounds to discriminate against people with a different sexual orientation or disability. Even during the emergency. One may even put forward the opposite thesis that in this period persons with disabilities require special care and care on the part of the state, because they are often not able to function independently and perform basic activities of everyday life. The regulations adopted by the Polish constitutional legislator should be critically assessed. They are contrary to both the European Convention on Human Rights and art. 32 par. 2 of the Constitution of the Republic of Poland. As it was mentioned at the beginning, the Convention introduced strictly defined conditions to fulfill a derogation in each case. Article 15 of the Convention gives the authorities wide discretion to decide on the nature and scope of the derogation measures necessary to reverse such a danger. In the first place, it is up to each state - which is responsible for the life

[33]Complak K., Remarks to the art. 233 of the Polish Constitution. In Haczkowska M. (Eds.). The Constitution of the Republic of Poland. Commentary, Warsaw, 2014, LEX.
[34] Ibidem.

of the nation - to assess whether it is threatened by "public danger", and if so - how far should you go to try to stave off it. The Court stressed that due to direct and constant contact with the current urgent needs of the country, its authorities are generally better prepared than the international judge to decide on the existence of such a danger and the limits of the necessary derogations[35].

The freedom of the authorities is not absolute, however. It is at the ECtHR's opinion whether the State has not gone beyond the 'strictly appropriate to the requirements of the situation'. The freedom of the national authorities is therefore accompanied by supervision by the ECHR. In its conduct, the Court must take due account of such relevant factors as the nature of the rights with a derogation, the circumstances and the duration of the situation considered to be public danger[36]. Especially when the measure leading to the waiver of obligations relates to the fundamental right of the Convention, such as the right to liberty, the Tribunal must be convinced that it was a genuine response to the threat and was fully justified on account of special circumstances and adequate safeguards against abuse[37]. Evaluation from the perspective of art. 15 of the Convention should primarily focus on the general situation in a given country. It is necessary to examine the measures envisaged within the framework of derogations which, either directly or indirectly, relate to rights and freedoms regulated in the Convention. The assessment of the existing threat to the nation will become particularly important in such a situation. The test carried out at the outset may be based on the assessment that the measures in question were unjustified. This may happen when the measures are discriminatory against specific individuals on specific matters[38]. The constituent element of the introduced restrictions is the need to issue an appropriate statement in which the State Party, determine the rights and freedoms that are derogated and indicate the territory of this derogation. The violation of this obligation was evident in Turkey in the case of Sakik v. Turkey, in which the Tribunal considered that it would be contrary to the object and purpose of art. 15 of the Convention if, when defining the limits of the use of a derogation, it extended it to parts of the country not specifically mentioned in the government statement[39].

It seems, therefore, that it is impossible to regard discrimination as a propriety on the basis of such characteristics as sexual orientation and disability. In particular, that according to

[35] Verdict of ECHR from 19 February 2009 in case A. and others v. Great Britain, case no. 3455/05, § 173.
[36]Verdict of ECHR from 26 may 1993 in case Brannigan and McBride v. The United Kingdom, case no. 14553/89.
[37] Verdict of ECHR from 18 February 2009 in case A. and others v. Great Britain, case no. 3455/05.
[38] Ibidem.
[39] Verdict of ECHR from 26 November 1997 in case Sakik v. Turkey, case no. RJD 1997-VII, § 39.

ECHR jurisprudence, the derogation of certain rights and freedoms should always be justified, but there is no rational basis for considering that such deregulation is consistent with the objectives of the Convention and the basic principles of human rights. Even considering the wide scope of the margin of appreciation concept.

CONCLUSIONS

A state of emergency derives from a governmental declaration made in response to an extraordinary situation posing a fundamental threat to the country. The declaration may suspend certain normal functions of government, may alert citizens to alter their normal behavior, or may authorize government agencies to implement emergency preparedness plans as well as to limit or suspend civil liberties and human rights. The protection of individual rights and freedoms during emergency states is mainly regulated in the constitutional and statutory acts of individual states. Constitutional regulations in Lithuania and Poland seem to be particularly wide in this respect. While the constitutional regulations in Lithuania indicate many exceptions that allow limiting rights and freedoms during extra-ordinary conditions, they do not, in the author's opinion, raise major catastrophes. In Poland, however, it is a particularly controversial matter. In particular regarding the literal admission of discrimination against people on the basis of such legally relevant features as disability or sexual orientation during, eg, martial law. Having regard to the directives resulting from art. 15 of the Convention, as well as ECHR jurisprudence, it seems that this is a completely inappropriate solution and requires changing as soon as possible.

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Paweł Śmiałek*, PhD student, University of Warmia and Mazury in Olsztyn, Poland, Department of the Constitutional Law. Research interest: human rights, constitutional law, civil law, penal law