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## Draft Law on Civil Protection and the State of Natural Disasters as a Prolegomenon to a New View on Crisis Management

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### **Abstract:**

**Purpose:** The article presents results of research investigating the issue of proposed changes and their influence on the functioning of the state's organs and organizations dealing with crisis management in the light of government bill on civil protection and the state of natural disasters.

**Design/Methodology/Approach:** Normative material analysis and applied dogma with the approach taking advantage of legal techniques used with a regard to interpretation and analysis of law has been applied in this research.

**Findings:** In the course of research, it has been proved that published draft law includes a lot of significant legal concerns.

**Practical implications:** It has been indicated that the draft law on civil protection and the state of natural disasters does not meet basic legislative standards, and some of the proposed solutions are not compatible with the Constitution of the Republic of Poland. All these issues prove the necessity to implement some supplementary and remedial actions.

**Originality/value:** Research actions allowed to indicate the aspects in the draft law on civil protection and the state of natural disasters, which need to be changed.

**Keywords:** Structure, Scope, and Performance of Government; Crisis Management; National Security and War; Interjurisdictional Differentials and Their Effects.

**JEL codes:** H11, H12, H56, H73.

**Paper type:** A research article.

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## **1. Introduction**

The necessity to protect citizens of Poland was established by the means of the Constitution of the Republic of Poland. Among many responsibilities of the state, the Constitution includes realization of the following needs: existence, survival and development (The Constitution of the Republic of Poland, 1997). All these aspects have been connected with necessary protection of life, health, property and environment of human existence.

Realization of such specified responsibilities is based on legal and institutional solutions (Kitler and Skrabacz, 2010). Local, national and international systems of civil protection from all kinds of threats in the time of peace and war are created and developed in such state of matters. They include:

- Threat detection;
- Preventing and securing undertakings;
- Warning and alarming;
- Isolation of threatened areas;
- Performing rescue operations;
- Providing medical aid to victims;
- Elimination of destructive incidents (Jakubczak and Flis, 2006).

Unfortunately, the analysis of current solutions concerning civil protection shows that, notwithstanding great significance of this issue, there is still lack of system solutions in this field. Generally used term ‘civil protection’ still has no unequivocal interpretation (Kitler and Skrabacz, 2010).

There is also no consensus concerning other statutory solutions. Thus, there are no uniform regulations, which allows to comment on the current solutions as not ‘complete’ but ‘dispersed’ organization of civilians’ protection. Due to such state of matter, the studied actions aimed at optimization of civil protection management have been currently realized by the means of the following structures:

- Crisis management (the Act of 26 April 2007);
- Civil protection (the Act of 21 November 1967);
- National Fire and Rescue System (the Act of 24 August 1991);
- State Medical Rescue (the Act of 8 September 2006);
- Emergency notification system (the Act of 22 November 2013).

There were many attempts to order and unify issues connected with security and civil protection. However, they ended up as a fiasco. The first draft law on civil protection was created in 2009. The subsequent projects with extended scope, referred to as ‘protection of the population and civil protection’ were developed in 2016 and 2019 (Stochaj, 2020)

Created situation became even more complicated on a day when Human Defense Act entered into force. It repealed ruling provisions concerning 'civil protection' in Poland. At the same time, there were no regulations concerning civilians' protection in the time of military conflicts (Act of 11 March 2022).

Developing new solutions became necessary and urgent due to realization of former international commitments including provisions of ratified by Poland Geneva Conventions of 1949. The draft law 'civil protection and the state of natural disasters' is the result of undertaken actions in this field.

The statement of reasons attached to this draft law indicated that its implementation would conclude several decades of attempts to create a comprehensive legislative instrument which would refer to civil protection, understood as all kinds of state's operations in this field, both, during the time of peace as well as the time of war (Draft law of 31 August 2022).

## **2. The Essence and Aim of New Statutory Solutions**

The draft law 'on civil protection and the state of natural disasters' was placed on the Internet, on Government Centre for Legislation sites. Argumentation for such necessity was presented in a comprehensive and multifaceted way (Draft law of 31 August 2022).

First of all, it was noticed that, after several years, provisions regulating the issue of crisis management became insufficient in comparison with requirements of the state and dynamically changing circumstances. Especially in the second decade of 21<sup>st</sup> century, Poland experienced a number of crisis incidents connected mainly with forces of nature. The flood in 2010 or severe atmospheric phenomena in 2013 and 2017 became the examples confirming the need to make serious structural changes in the field of crisis management.

Unfavorable development of geopolitical situation around the world, and especially in Europe, where after many years of peace, a military conflict broke in the neighboring countries, is also not without significance. In such situation there was an urgent necessity of changes in so far functioning organizational structures of the states responsible for civil protection.

Such changes would help to perform civil protection operations more effectively in a situation of a potential military conflict on the territory of the Republic of Poland. It was emphasized that such conclusions result from experiences of Ukraine due to military operations performed on Ukrainian territory. The civilians are the victims, the key infrastructure, ensuring Ukrainians functioning, is purposefully destroyed for the state's safety.

On the other hand, taking into consideration different experiences gained in the course of exercises, state and regional trainings, including those of international character – a necessity to regulate the area of civil protection has been diagnosed. It was also decided that a lot of now archaic solutions should be eliminated from the legal system.

Additionally, the year 2020 – the time of epidemics on a global range caused by SARS-CoV-2 virus – clearly indicated the need of performing above-standard actions in a short supply of time, power and resources and limited legal environment.

In such a state of matters it was assumed that proposed legislative solutions would constitute the answer to postulates submitted by legislative and executive authorities, Supreme Audit Office, scientific community and citizens, as well as practitioners functioning in crisis management system on different levels of government and local authorities administration.

The draft law assumes that the new act of law is to replace currently governing legal acts concerning civil protection, such as:

- The Act of 18 April 2002 on the state of natural disasters – OJ No. 62, item 228 with amendments;
- The Act of 21 November 1967 on general obligation to defend the Republic of Poland (in the part concerning civil protection) – OJ No. 44, item 220 with amendments;
- The Act of 22 November 2002 on compensation of losses resulting from limitation of freedom, human and citizen rights in the state of emergency (in the part concerning the state of natural disaster) – OJ No. 233, item 1955 with amendments;
- The Act of 26 April 2007 on crisis management – OJ No. 89, item 590 with amendments;
- The Act of 18 November 2011 on specific solutions concerning elimination of flood effects – OJ No. 234, item 1385 with amendments), as well as the change of about 30 other accompanying acts of law.

Justification of the draft law indicates that one of the primary objectives of this act's authors would be the above mentioned will to order legal regulations including limitation of the number of legal acts regulating the same or similar issues, as well as defining particular entities and their interdependencies in a way which does not arise interpretative doubts.

It was assumed that, by the means of the studied legal act, there would be a redefinition of place and tasks of crisis management as a system functioning within the frames of civil protection system. Civil protection would, at the same time, constitute a primary objective of actions undertaken by the state to secure people,

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property and infrastructure, often with the use of extraordinary instruments within the frames of crisis management and actions in situation of preparedness raise need.

It was noticed that current actions of public administration, services, inspections and guards in relation to dispersion of tasks in several legal acts, were realized separately, frequently duplicating solutions which involved increased financial expenditures. Thus, it was assumed that the act should implement a task form with a full integration and commonality of the process participation. Organs and services responsible for creating solutions in the time of peace and the time of war were noticeably differentiated.

Inclusion of services, as well as non-government associations and organizations which train and operate in rescue systems on daily basis was also provided for. According to the authors of the studied draft law, it will allow to reach the capability of performing these tasks in the war time, with simultaneous preservation of the possibility of using their potentials, both human and equipment in every other situation of threat to the state's security.

According to the draft law's assumptions (article, point 1), the act of law will specify the organs which would have competencies to deal with issues connected with civil protection, their rules of functioning and the range of assigned tasks. Moreover, the act will regulate (Draft law of 31 August 2022):

- The rules and execution mode of civil protection rules in emergency situations;
- The rules of public administration organs functioning and the range of limitations of rights and citizens' freedoms in the state of natural disaster;
- The rules of functioning of the State Medical Rescue;
- The rules of identifying threats and warning, alarming and notifying people;
- Special solutions in relation to natural disaster;
- Forms of help for natural persons suffering due to natural disaster;
- The rules of identifying critical infrastructure and its operators' responsibilities.

The idea of 'crisis management' has changed, which is especially important from the point of view of this research. Nowadays, it is understood as an activity constituting an element of national safety management (the Act of 26 April 2007). Crisis management in the new act is perceived as an element of protecting people (Draft law of 31 August 2022). Moreover new solutions also include:

- Appointing State active –duty services supporting minister competent for internal affairs;
- Creating National IT System with Civil Protection Resources;

- Mandatory functioning of the Crisis Management Center only on the level of a voivodship;
- Implementing two new quasi extraordinary solutions: the state of emergency and the state of danger;
- Strengthening the role of the Prime Minister who can give commands to different entities.

On the one hand, the proposed act ‘on civil protection and the state of natural disasters’ refers to fundamental issues, implementing concepts so far functioning only in international environment and academic community, such as, for example ‘civil protection’, to legal system.

On the other hand, it introduces a number of specific solutions facilitating current actions of entities responsible for crisis management. The most important of them is focusing on crisis management stages – reaction and restoring, by the means of improving information flow process between public administration organs, as well as reconstructing financing model in a way enabling more effective financial aid to victims, rebuilding destroyed infrastructure and more rational use of human resources trained in the field of rescue.

Moreover, the act proposes solutions facilitating functioning of the state in situations of extraordinary emergency, including additional actions, such as implementing restrictions, prohibitions and orders applied to civil protection entities and to natural persons only in case of implementing the state of natural disaster.

The act also assumes limitation of the number of planning documents to a minimum. Such documents often include duplication of provisions resulting from other legal acts which have been already reflected in separate plans.

Controls and daily practice revealed mistakes in creating and using plans, since all entities participating in civil protection develop internal plans on the basis of which they operate with the use of own resources. Proposed solution of creating integrated database, procedurally supporting administration, will facilitate taking actions.

According to draft law’s authors, one of the most important elements of the act is strengthening the effectiveness of actions aimed at civil protection. Due to this act the role of the Prime Minister, the minister competent for internal affairs and voivods will be strengthened, not only in relation to urgent crisis management, but also to civil protection and defense.

The role and scope of tasks of the remaining civil protection organs on central level and on districts and communities’ level will also be précised (Draft law of 31 August 2022).

### **3. Research Analysis and Assessment of Proposed Solutions**

Research consideration of solutions proposed in the draft law ‘on the civil protection and the state of natural disaster’ arises a lot of doubts. Article 27 paragraph 1 of the draft law is the most controversial. It implements two new situations justifying taking actions – adequately to existing threats.

The first of them is so called ‘state of emergency’. It can be implemented if, due to negative circumstances resulting from natural forces or human activity (including existence or the possibility of existence of crisis situation on a specified territory), there is a necessity to raise the level of emergency of public administration organs to realize tasks within the scope of civil protection.

The Minister competent for internal affairs and a voivod are given the rights to implement, prolong and cancel this state. The Minister is entitled to declare the state of emergency on the territory of the whole country or only in its part, and a voivod respectively –on the territory of his voivodship or in its part (article 28, paragraph 1 of the discussed draft law).

The state of emergency takes effects in government entities belonging to the State Medical Rescue and other entities of government administration within the scope indicated by a minister competent for internal affairs. It is worth emphasizing that in case of implementing the state of emergency by a voivod, this state would also take effect in organs of local authorities administration (article 29, paragraph 3 of the draft law).

On the other hand, implementing the ‘state of danger’ is justified if introducing ‘the state of emergency is not sufficient to realize tasks within civil protection, and it is necessary to take additional actions by the public administration organs and implement restrictions, prohibitions and orders applicable for civil protection entities.

The authority competent to implement or cancel this state is the Prime Minister (article 30, paragraph 1 of the draft law). The Prime Minister is also entitled to give binding commands (urgently performed and not demanding justification) to organs of local authorities, other local government units and to entrepreneurs. Minister within whose scope of activity is prevention from the results of the state of danger or the state of natural disasters, as well as a voivod would have similar rights (article 31, paragraph 2-3 of the draft law).

In case of business entities, there is high probability that such command may interfere with freedom of business activity (Rozwadowski, 2022). The draft law does not define the substantive scope of commands which can be given to entrepreneurs in the state of danger. It was also not indicated if giving such commands may be related to limitation of business activity.

What is very important, refusal to adjust to the minister or a voivod's order, as well as a statement that local authorities inappropriately perform the order or are not effective in realization of coordinative actions resulting from one of the states, may lead to suspending the local government organs and applying a government commissar (article 31, paragraph 7 of the draft law). Immediately enforceable decision within this scope would be made – at the request of the voivod – by a Prime Minister.

At this point, it should be noticed that the above indicated solutions, especially referring to proposed new quasi extraordinary states: 'state of emergency' and 'state of danger' are incompatible with the Constitution. Implementation of these solutions, justified by a draft law authors with the necessity of ordering the legal state, could only help to introduce changes in the political system in Poland without formal change of the provisions of the Constitution (Izdebski, 2022).

Proposed solutions connected with implementing quasi extraordinary states: 'emergency' and 'danger' will only cause blurring of the boundaries between a normal situation 'in which the state functions' and 'extraordinary situations' defined in the Constitution. Only in the second case (state of danger) it is possible to introduce limitations in constitutional freedom rights, human and citizen rights.

Solutions proposed in the draft law strengthen the role of the Prime Minister (in currently governing regulations concerning civil protection, it was the Council of Ministers which was a decisive organ), giving him the right to suspend local government organs in case of, not only the state of natural disasters, but also new quasi extraordinary states.

Implementation of government supervision over the activity of a local government is inconsistent with article 171, paragraph 1 of the Constitution, which stipulates that the activity of a local government can be supervised only due to legal issues (the Constitution of the Republic of Poland, 1997).

Extending powers of the Police, Border Guard, State Fire Service or Military Forces of the Republic of Poland also raise doubts. Article 32 of the discussed draft law gave these entities the right to give orders concerning specific behavior within the frames necessary to enforce actions related to reacting to existing threat or natural disaster and to realize statutory tasks. Failure to comply with these orders was to result in penal liability (offense).

Rights given in such a blanket way, as well as potentially wide range of possible orders may create a risk of malpractices. Analysis of provisions related to the state of natural disaster allows to draw a conclusion that they mostly duplicate solutions contained in currently governing Act of 18 April 2002, including article 20, 21 and 22, anticipating the possibility of implementing precisely defined restrictions



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concerning freedom, human and citizen rights in a situation of the state of natural disaster.

Crucial changes took place in reference to specification of entities responsible for directing operations during the state of natural disaster. Only organs of government administration are competent in this field (district administrator, voivod, competent minister). However, a district administrator may only make use of these rights when the state of natural disaster was declared in at least two communities included in the district (article 35, point 1).

These regulations do not include level of communities. In previous provisions – in case of declaring the state of natural disaster – these tasks were realized respectively by a commune administrator, mayor and a president of a city. Local authorities' tasks – in the discussed draft law – are limited to ensuring conditions to perform operations and organize rescue actions on a territory of a commune.

The activity of the State Medical Rescue was provided for in the draft law 'on civil protection and the state of natural disasters'. It is to replace the National Fire and Rescue System in terms of functionality. The National Fire and Rescue System acts on the basis of the provisions of the Act on Fire Protection. This system is to be created by organizational units of the State Fire Service and Fire Protection Units, including Military Fire Protection Units, Work Fire Brigades, Work Rescue Services and Volunteer Fire Brigades (the Act of 24 August 1991).

Organs of public administration and entities of the State Medical Rescue became responsible for realization of tasks related to citizens protection in the times of peace and tasks of civil protection in the times of war and the states of emergency (article 49, paragraph 1 and 2 of the draft law).

It is also worth noticing that such duty – being in possession of structures ensuring civil protection in the time of war results from the first additional Protocol to Geneva Conventions of 12 August 1949 related to protection of victims of international conflicts, created in Geneva on 8<sup>th</sup> June 1977 (OJ 1992 n. 41, item 175).

Specific regulations concerning the way these tasks are to be realized were left for the Prime Minister who addresses the following issues by the means of a resolution: fights with fires and other natural disasters; rescue: medical, technical, ecological, chemical; rescue during extraordinary incidents caused by hazardous biological agent, high altitude rescue; search and rescue actions; disposition of the state rescue system; inspections of operational readiness of fire protection units included to the state rescue system; documentation of incidents and rescue system functioning; organization of military reserves; organization of centers of the State Fire Service coordination and cooperation with other systems and units centers; preparing rescue plans; organization of rescue actions; specific conditions and modes of including and excluding fire protection units in the state rescue system; providing civil defense.

However, it is worth emphasizing that the draft law's authors are not consistent in their actions. As it has been mentioned above, in the article 50 of the draft law the Prime Minister was given the right to regulate the issues connected with preparation of rescue plans by the means of a resolution.

The subsequent provisions of the discussed draft law directly indicate the entities responsible for these plans preparation, elements which should be included in these plans and the rules of conduct while planning (article 52 of the draft law).

#### **4. Conclusions**

Ensuring security for citizens is a priority responsibility of the state. The society has the right to expect that the state, no matter of the circumstances, will meet these requirements. Attempts to build integrated national security system, presented throughout last few years, have not brought expected results so far.

Adopting the Homeland Defense Act on 11<sup>th</sup> March 2022 caused that a crucial part of security concerning civil protection in case of a war lost its legal power. The necessity to meet international requirements speeded up proceedings concerning comprehensive solutions related to citizens protection.

Unfortunately, it has to be stated that the draft law 'on civil protection and the state of natural disasters' presented by the Ministry of Internal Affairs and Administration does not meet basic legislative standards, and the part of proposed solutions is incompatible with the Constitution of the Republic of Poland.

#### **References:**

- Izdebski, H. 2022. Projekt ustawy o ochronie ludności oraz o stanie klęski żywiołowej – uporządkowanie stanu prawnego czy kontynuacja zmiany ustroju bez zmiany Konstytucji? [https://www.batory.org.pl/wp-content/uploads/2022/05/Projekt\\_ustawy-o-ochronie-ludnosci.pdf](https://www.batory.org.pl/wp-content/uploads/2022/05/Projekt_ustawy-o-ochronie-ludnosci.pdf).
- Jakubczak, R., Flis, J. 2006. Bezpieczeństwo narodowe Polski w XXI wieku. Wyzwania i strategię, 338.
- Kitler, W., Skrabacz, A., 2010. Bezpieczeństwo ludności cywilnej. Pojęcie, organizacja i zadania w czasie pokoju, kryzysu i wojny. Wydawnictwo Towarzystwo Wiedzy Obronnej, 60-68.
- Projekt, 31 sierpnia 2022 r. Etap: uzgodnienia, opiniowanie, konsultacje publiczne - Act on civil protection and the state of natural disaster; <https://legislacja.rcl.gov.pl/projekt/12363754/katalog/12909374>.
- Rozwadowski, R. 2022. Ustawa o ochronie ludności i stanie klęski żywiołowej może ograniczać prawa przedsiębiorców. In: <https://www.prawo.pl/biznes/ograniczenia-dla-przedsiębiorców-w-projekcie-ustawy-o-ochronie,517564.html>.
- Stochaj, J. 2020. Ochrona ludności i obrona cywilna w systemie bezpieczeństwa narodowego. Difin.
- Act of 21 November 1967 on the universal obligation to defend the Republic of Poland (Dz. U. Nr 44 poz. 220 as amended).

- Act of 24 August 1991 The act on fire protection (Dz. U. Nr 81, poz. 351 as amended).  
Act of 02 April 1997 Constitution of the Republic of Poland, 1997. (Dz. U. Nr 78, poz. 483 as amended).  
Act of 08 September 2006 on the State Emergency Medical Services (Dz. U. Nr 191, poz. 1410 as amended).  
Act of 26 April 2007 on crisis management (Dz. U. Nr 89 poz. 590 as amended).  
Act of 22 November 2013 on the emergency notification system (Dz. U. 2013 poz. 1635 as amended).  
Act of 11 March 2022 on defense of the Fatherland (Dz. U. 2022 poz. 665 as amended).