
A State of Emergency as a Protection of the Constitutional System of the State, the Security of Citizens and Public Order

Submitted 10/09/24, 1st revision 25/09/24, 2nd revision 01/10/24, accepted 30/10/24

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Abstract:

Purpose: The purpose of this article is to present the institution of a state of emergency, which is a legal tool intended to be used in specific political and social conditions in order to solve specific state problems.

Design/Methodology/Approach: The main methodology is based on the analysis of scientific literature and on the synthetic description of key conclusions resulting from the review of literature describing various aspects of the analyzed issue concerning the state of emergency.

Findings: The article diagnoses the basic features of the state of emergency and shows the methods of action of state bodies in the event of significant threats that require special action due to their specificity. The evaluation of threats and the development of methods and means for their prevention mean that the institution of the state of emergency should be constantly discussed in Polish constitutional law.

Practical Implications: In order to further improve legal regulations, it is necessary to continue work on raising social awareness of the importance of the institution of the state of emergency as provided for in the Constitution of the Republic of Poland.

Original/Value: For the purposes of this article, a multi-aspect synthetic and critical analysis of data available in the scientific literature was conducted. The proposed solutions are to contribute to raising awareness among administrative bodies to address the subject of the state of emergency, which is the state of emergency.

Keywords: Institution of the state of emergency, state of emergency, citizen safety, public order, threats.

JEL classification: H56, F52, O33.

Paper type: Research article.

Acknowledgements: The authors express their gratitude to all participants in the study.

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1. Introduction

A state of emergency is a departure from the normal functioning of the legal order in a country in order to save some legally protected good. A state of emergency is characterized by the possibility of limiting certain rights and obligations of an individual, but also leads to a change in the competences of certain powers of state authorities. A state of emergency is regulated in the provisions of *the Constitution of the Republic of Poland* of April 2, 1997 (Journal of Laws 1997, No. 78, item 483, as amended).

The consequence of introducing the institution of the state of emergency is the limitation of human and civil rights and freedoms guaranteed by *the Constitution of the Republic of Poland* (Prokop, 2005). This institution is one of the most important regulations in Polish law, because it addresses issues related to specific threats to the state and citizens (Gołębiowska *et al.*, 2017a).

2. Definition of a State of Emergency

There are many definitions of the state of emergency in the literature (Eckhardt, 2012). Some authors draw attention to the effects of introducing individual states of emergency. They also emphasize the special circumstances that accompany its introduction, namely the special threat to public safety and order. It can be said that the concept of the state of emergency is a broad concept and consists of many parts, and indicating even one basic element becomes very difficult.

According to some authors, a state of emergency in a democratic state means a legal regime introduced in the event of a specific threat, the removal of which is possible only by means of exceptional measures (Prokop, 2005). In the event of the introduction of at least one of the three states of emergency, certain principles apply, including restrictions on the rights and freedoms of individuals. In such a case, the state authorities exercise their prerogatives on specific principles and use special powers aimed at removing the threat as quickly as possible.

Experts on the subject emphasize that the term state of emergency consists of several elements and each of the states of emergency is provided for in the Constitution or in ordinary laws or can be adopted as an institution of applicable customary law. The introduction of one of the states of emergency causes a different legal, political and social situation, which is characterized by many deviations from the rules prevailing in normal conditions of the legal order (Gołębiowska *et al.*, 2021).

Therefore, the state of emergency is a response to the existing threat to a specific public good, which requires special and immediate defense or protection, using extraordinary measures (Prokop, 2005).

The analysis of legal acts concerning states of emergency shows that a state of emergency, regardless of its type, consists of several structural elements (Brzeziński, 2007). One of the elements is the procedure for introducing states of emergency, which is characterized by a special procedure. It specifies entities with the appropriate competences to introduce states of emergency and the authority to supervise or control decisions to introduce various types of states of emergency, i.e., either martial law or a state of emergency or a state of natural disaster.

This procedure establishes requirements for publication, the procedure for entry into force and the legal form of the state of emergency (Gołębiowska *et al.*, 2017c). Another structural element is the purpose of introducing states of emergency, i.e., the justification for introducing a state of emergency, presenting the desired effects, as well as specifying the actions that should be applied. A structural element of states of emergency are the premises for its application.

Their task is to indicate the conditions that allow for the introduction of states of emergency and to determine when a given state of emergency can be applied, so that the decision is not only legal, but above all, justified. The structural element of introducing states of emergency is also the scope of the territory, which subordinates a given area to one of the states of emergency and its possible change.

The structural elements of the state of emergency also include its duration, i.e., the length of the state of emergency is determined and the possibility of its extension, but on specific conditions (Gołębiowska *et al.*, 2017a).

An important structural element of introducing states of emergency are also extraordinary measures, namely not only the effects that the state of emergency may cause, but also changes related to the state of emergency.

A quite important structural element is the procedure for lifting states of emergency, indicating the entities responsible for ending this state, the procedure and the conditions allowing for its lifting. It can therefore be said that the structural elements of the state of emergency create a kind of normative framework for states of emergency.

To sum up the above considerations, it is worth noting that the issue of introducing states of emergency is not often considered in constitutional law. The reason for this situation is primarily the exceptional nature of introducing martial law, a state of emergency and a natural disaster, which are often not applied at all in practice.

There is no doubt that there are many benefits resulting from giving a state of emergency constitutional rank, although one can encounter different views that undermine the opinions indicated.

3. Rules Applicable During the Introduction of States of Emergency

The Constitution of the Republic of Poland provides for three categories of states of emergency, namely: a state of emergency, martial law and a state of natural disaster. Legal acts that contain legal provisions regarding the institution of states of emergency are also acts.

The generally applicable acts that specify the principles of operation during states of emergency are: the Act of 21 June 2002 *on the State of Emergency* (Journal of Laws of 2002, No. 113, item 985, as amended), the Act of 29 August 2002 *on Martial Law and on the Competences of the Commander-in-Chief of the Armed Forces and the Principles of His Subordination to the Constitutional Bodies of the Republic of Poland* (Journal of Laws of 2002, No. 156, item 1301, as amended) and the Act of 18 April 2002 *on the State of Natural Disaster* (Journal of Laws of 2002, No. 62, item 558, as amended).

States of emergency were recorded in Chapter XI *of the Constitution of the Republic of Poland* of 1997. It formulated the principles that are to apply during the introduction of various types of states of emergency. The type and degree of threat are presented in Article 228 *of the Constitution of the Republic of Poland* (Prokop, 2005).

The basic principles responsible for the introduction of states of emergency are: the principle of exceptionality, the principle of legality, the principle of proportionality, the principle of purposefulness, the principle of protection of the foundations of the legal system and the principle of protection of representative bodies (Gołębiowska *et al.*, 2017c). Each of the presented principles has its reference to individual states of emergency.

The basic principle of introducing a state of emergency is the principle of exceptionality. However, in order for the relevant state bodies to decide to introduce martial law, a state of emergency or a natural disaster, two conditions must be met, specified in Article 228, paragraph 1 *of the Constitution of the Republic of Poland*.

The legislator has in mind a situation of special threat or insufficiency of standard constitutional measures. The premise regarding "special threat" can be understood as a directive addressed to the bodies whose competences include the issue of deciding on the introduction of a state of emergency (Gołębiowska *et al.*, 2021). The point is that the bodies to which it is addressed should not do so in the event of every threat that should not be considered as special.

The provisions of *the Constitution of the Republic of Poland* do not indicate what threats can be included in the category of "special". Therefore, the most important state bodies that are decision-making in the field of introducing states of emergency must analyze the given threat in detail and decide whether it is necessary to activate

the provisions on the appropriate state of emergency. An element included in the principle of exceptionality is the "insufficiency of ordinary constitutional measures", which applies only and exclusively to the state of emergency and the state of natural disaster.

In a situation where martial law could be introduced, it is not only about the lack of constitutional means to eliminate the threat, but above all about the possibility of organizing the state's defense as quickly and efficiently as possible, as well as the psychological mobilization of society, which should be made aware of the essence of the threat (Gołębiowska *et al.*, 2021). The principle of exceptionality also specifies the unwritten formulation that the introduction of any of the states of emergency should only occur as a last resort.

The principle of legality in accordance with *the Constitution of the Republic of Poland* states that "a state of emergency may be introduced only on the basis of an act, by way of a regulation, which is subject to public announcement". It follows from this that the legislator has determined that states of emergency have a three-level regulatory structure on the basis of: constitution - acts - regulations.

Therefore, states of emergency are regulated by acts. In 2002, the Sejm passed acts relating to states of emergency. The Act of 18 April 2002 *on the state of natural disaster*, the Act of 21 June 2002 *on the state of emergency*, the Act of 29 August 2002 *on martial law and on the competences of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional bodies of the Republic of Poland* and the Act of 22 November 2002 *on the compensation of property losses resulting from the restriction of human and civil freedoms and rights during the state of emergency came into force* (Journal of Laws of 2002, No. 233, item 1955, as amended).

The principle of legality requires that the introduction of states of emergency be regulated by statutes. On the other hand, the establishment of an additional requirement, which states that the regulation on the introduction of a given state of emergency should be announced to the public, should be announced not only in the Journal of Laws, but also in other generally available means of communication (Brzeziński, 2007).

The establishment of an additional condition concerning the announcement was the reason for the possibility of difficulties in accessing published normative acts. Moreover, the possibility of making public information about the introduction of a state of emergency through generally available means such as radio or television, significantly facilitates the activities of the bodies responsible for managing the course of the state of emergency, while citizens have the opportunity to familiarize themselves with the rigors of the introduced state of emergency (Gołębiowska *et al.*, 2017c).

The principle of legality also applies to claims for compensation for property losses incurred as a result of limiting the rights and obligations of citizens. Compensation covers only compensation for property losses, excluding benefits that the injured party could have achieved if the loss had not occurred (Prokop, 2005). However, the injured party is not entitled to compensation if the loss was caused solely and exclusively by his fault. The procedure for seeking compensation is a mixed administrative and judicial one.

The principle of proportionality is enshrined in Article 228, Section 5 of *the Constitution of the Republic of Poland*. According to this provision: "actions taken as a result of the introduction of a state of emergency must correspond to the level of threat and should aim to restore the normal functioning of the state as soon as possible".

The principle of proportionality can be considered in several contexts. Special responsibility for the interpretation of the principle of proportionality belongs to the President of the Republic of Poland and the Council of Ministers (Gołębiowska *et al.*, 2017a). In such cases, these bodies decide to introduce one of the three states of emergency. This principle also applies to all public authorities, which are obliged to follow the premises of the principle of proportionality in the event of the introduction of a state of emergency.

Another group of persons to whom the principle of proportionality is addressed are the bodies, which, within their competences, determine the responsibility of the persons who made the decision to introduce a given state of emergency and consider the legality of the decisions they made at that time. An important element of the principle of proportionality is also the activity of the Constitutional Tribunal, which verifies the conformity of legal acts issued during a state of emergency with *the Constitution of the Republic of Poland* (Gołębiowska *et al.*, 2021).

The principle of expediency concerns taking actions that are intended to restore the normal state of functioning of the state as soon as possible. The provisions of *the Constitution of the Republic of Poland* do not define what "normal functioning of the state" means. However, this concept can be understood not only as the lifting of state restrictions, but also as the restoration of the full realization of the rights and freedoms of citizens. The term "normal functioning of the state" is necessary to recognize that the threat has subsided and the state of emergency can be ended.

The principle of expediency requires that the proper state of functioning of the state be restored by the authorities as soon as possible. Therefore, all decisions made by state authorities and available forces and resources should serve this purpose. It is important that, despite the efficiency of decision-making during the state of emergency, the principle of a democratic rule of law is observed (Gołębiowska *et al.*, 2021). The principle of expediency is primarily a premise for the state of emergency to be temporary and limited in time. Its lifting is simultaneously

associated with the restoration of the normal functioning of the state (Gołębiowska et al., 2017b).

The principle of protection of the foundations of the legal system is included in Article 228, paragraph 6 of *the Constitution of the Republic of Poland*, which states that: "during a state of emergency, the following cannot be changed: the Constitution, electoral regulations to the Sejm, Senate and local government bodies, the act on the election of the President of the Republic of Poland and acts on states of emergency". Paragraph 6 of Article 228 of *the Constitution of the Republic of Poland* specifies which legal acts are particularly protected and no changes may be made to them during states of emergency.

This principle must be observed in all states of emergency, regardless of their duration and territorial scope (Gołębiowska et al., 2021). Upon the introduction of a state of emergency, all activities related to the amendment of the acts referred to in Article 228, paragraph 6 of *the Constitution of the Republic of Poland* must be suspended.

The principle of protecting the foundations of the legal system also applies to entities that have legislative initiative and during a state of emergency cannot submit a draft amendment to these acts, and the Marshal of the Sejm is obliged to refuse to accept them. This also applies to the President of the Republic of Poland, who after receiving the act for signature should postpone it (Gołębiowska et al., 2017a).

The legal act indicated by the legislator that cannot be changed is *the Constitution of the Republic of Poland*, because it is in the first place in the hierarchy of legal acts, as the fundamental law with which other legal acts must be consistent. Changing the provisions of *the Constitution of the Republic of Poland* is simultaneously changing the system of the state, which during a state of emergency may involve serious consequences. Maintaining the provisions of *the Constitution in an unchanged form* is primarily to ensure a return to normal rules of conduct after the end of the state of emergency (Prokop, 2005).

The ban on introducing changes to legal regulations also applies to the electoral regulations for the Sejm and Senate, local government bodies and the act on the election of the President of the Republic of Poland. This ban is primarily to protect persons exercising the highest authority in the country and making important decisions during states of emergency.

The legal acts listed in Article 228, paragraph 6 of *the Constitution of the Republic of Poland* are the acts on states of emergency. The introduced ban on making changes to these acts is dictated by the fact that they create a complex of basic provisions in use during the state of emergency, the violation of which may result in deepening restrictions on human and civil rights and freedoms and changes in the functioning of public authorities (Gołębiowska et al., 2017c).

In addition, this ban may pose a certain risk, because it may turn out that the state of threat is so serious that the statutory regulations may be insufficient to restore the standard functioning of the state.

The principle set out in Article 228, paragraph 7 of the *Constitution of the Republic of Poland* is the principle of protection of representative bodies. It indicates that: "during a state of emergency and within 90 days after its termination, the term of office of the Sejm cannot be shortened, a nationwide referendum cannot be held, elections to the Sejm, Senate, local government bodies and the election of the President of the Republic of Poland cannot be held, and the terms of office of these bodies are extended accordingly.

Elections to local government bodies are possible only where a state of emergency has not been introduced". The principle of protection of representative bodies is very important due to the fact that it prohibits holding elections during states of emergency. A change of state authority would not be conducive to eliminating the special threat (Gołębiowska *et al.*, 2021).

4. Formation myself Institutions State Exceptional on Reborn Lands Polish

In Poland during the interwar period, the basic legal acts that addressed a number of issues related to the state's activities in situations of unusual threats were the decree *on the introduction of a state of emergency* (Journal of Laws of 1919, No. 1, item 79) and the decree *on the use of the army in exceptional cases* of 2 January 1919 (Journal of Laws of 1919, No. 1, item 80).

The authority to apply the institution of a state of emergency based on the decree *on the introduction of a state of emergency* was held by the "Council of Ministers at the request of the Minister of Internal Affairs". The introduction of a state of emergency was possible for a maximum period of three months in any chosen location where, due to a threat to public safety, the use of this institution was necessary.

The Minister of Internal Affairs or an extraordinary commissioner appointed on his behalf had the authority to issue extraordinary regulations regarding ensuring public safety. On the other hand, failure to comply with the regulations issued by these bodies could result in a penalty of imprisonment of up to three months or a fine of three thousand marks.

The Minister of Internal Affairs or an extraordinary commissioner appointed by him could prohibit the organization of meetings, public gatherings, rallies, and marches. He had the authority to order searches and internment of people whose activities threatened public safety and order, as well as the possibility of confiscating publishing houses and closing printing houses that threatened the interests of the state with their activities. The organization of meetings, rallies or gatherings, despite

the issuing of prohibitions, authorized the use of the army, whose task was to disperse them.

The provisions of the decree *on the state of emergency were modified* on February 7, 1919. The competences of the Minister of Internal Affairs were expanded to include the authority to suspend the activity of periodicals that could pose a threat to public safety. In addition, the provisions of the decree tightened criminal liability for acts that, upon the termination of the interim procedure, entered the criminal proceedings and instead of a fine or arrest, a prison sentence could be applied, instead of imprisonment - a sentence of a house of correction, instead of a house of correction or a fortress - a sentence of severe imprisonment, instead of a severe fixed-term prison - a rigorous long-term prison and instead of a rigorous long-term prison - a death sentence by shooting.

The provisions of the decree of 2 January 1919 were constantly expanded, and the next document expanding its scope was the regulation of the Council of Ministers of 18 April 1919 *on the method of using the army to secure public order* (Journal of Laws of 1919, No. 55, item 276) . The change in the provisions of the decree focused primarily on the powers of the army and on activities aimed at restoring the disturbed harmony and public order.

On July 25, 1919, a law was introduced *on ensuring state security and maintaining public order in time of war*. (Journal of Laws of 1919, No. 61, item 364) together with the withdrawal of the provisions relating to the decree *on the introduction of a state of emergency*. In Polish legislation, until the introduction of *the March Constitution* (Journal of Laws of 1921, No. 44, item 267) , the concept of a "state of emergency" ceased to apply, being replaced by the term "state of war", but due to its scope, the act referred to a state of emergency.

The Act of 25 July 1919 avoided using the direct definition of the state of emergency, but maintained its main assumptions, so the change in terminology was irrelevant. In addition, the Act included a provision that the admission of a state of emergency is possible only in times of war. The authors of this provision omitted the fact that the institution of a state of emergency may be necessary in a state of peace. It was not until *the Constitution of the Republic of Poland of 17 March 1921* that the institution of a state of emergency was reshaped.

5. Legal Basis and Grounds for Introducing a State of Emergency

The Act of 21 June 2002 on *the State of Emergency* constitutes the legal basis for the institution of the state of emergency. The Act indicates the conditions for introducing and lifting the state of emergency and specifies the principles of operation of public authorities and presents the scope of restrictions on human and civil rights and freedoms, as well as modifications to regulations and final provisions.

According to the provisions of art. 2 sec. 1 of the Act *on the State of Emergency*, this state may be introduced in "a situation of a particular threat to the constitutional system of the state, the security of citizens or public order, including those caused by terrorist activities or activities in cyberspace, which cannot be removed by using ordinary constitutional measures [...]".

The generality of the grounds for introducing a state of emergency violates, on the one hand, the guarantee that it will not be introduced in a situation that will actually require it, but on the other hand, it protects human rights and freedoms against excessive violation in "normal" situations (Prokop, 2005). Therefore, the legislator's definition of the grounds for introducing a state of emergency is general in nature, which causes major interpretation problems.

The premise for introducing a state of emergency is a threat to the constitutional system of the state, which refers to the most important good of the state, which is the *raison d'état*. Other premises also concern issues that are very important for the functioning of the state and democracy, but do not address the fundamental issue of the continuity of the nation, which is the system of the state.

According to some authors, the concept of a state of emergency includes two extraordinary states. One of them can be introduced in the event of an internal threat of the most fundamental nature, namely when the constitutional system of the state is threatened. This threat is so serious that it is almost equal to war, where the continuity of state authority can be interrupted. The second form of a state of emergency is introduced when the threat is serious but does not threaten the existence of the state.

In the light of *the Constitution of the Republic of Poland*, the first reason for introducing a state of emergency is a constitutional threat to the state system (Gołębiowska *et al.*, 2017c). This threat refers specifically to the most important legal act in Polish legislation – the Constitution. The instability of the constitutional system will mainly include the fundamental principles of the constitution. It should also not be ruled out that the introduction of a state of emergency will be associated with a threat to the constitutional institution.

Therefore, various threats related to institutions of extra-constitutional rank cannot be the reason for introducing a state of emergency. The determinants of a threat to the constitutional system of the state will not be realized in a situation when it is based on issues important from the point of view of the constitution, but regulated by acts of extra-constitutional rank (Gołębiowska *et al.*, 2017a). Moreover, the threat in such situations may not turn out to be so serious that it cannot be removed by ordinary constitutional means.

Grounds for introducing a state of emergency pursuant to Article 230 *The Constitution of the Republic of Poland* of 2 April 1997, is a threat

to the safety of citizens and public order. It may be worth noting that *the March Constitution* of 1921 in art. 124 section 1 did not use the premise of "citizens' safety" as indicated by *the Constitution of the Republic of Poland* of 2 April 1997, but used the premise of "public safety". Some authors emphasize that public safety in the broadest sense is all the conditions and social facilities protecting citizens from phenomena that are dangerous to life and health and that threaten serious economic losses.

All state authorities and administration bodies are obliged to protect public safety understood in this way (Gołębiowska *et al.*, 2017b). According to the definition, public safety includes not only the safety of citizens, but also the state. Citizens' safety is a much narrower concept than public safety, which is very appropriate in the sense of the premise for conducting a state of emergency.

Fulfilling the condition of a threat to the safety of citizens will only be possible if it concerns all citizens. In addition, it is not disputed that a state of emergency can be introduced only in part of the country's territory, but the threat must concern all citizens, not just a selected social group.

Another premise for introducing a state of emergency in the light of art. 230 of *the Constitution of the Republic of Poland* is a threat to public order. This concept should be understood as certain rules, principles or orders that should be observed by citizens (Gołębiowska, 2017). Observance of the adopted principles by citizens ensures that they are not exposed to conflicts or nuisances. The Penal Code of 6 June 1997, in Chapter XXXII, indicates crimes against public order (Journal of Laws No. 88, item 553, as amended). The act includes among crimes against public order: taking a hostage (art. 252), public gathering (art. 254), inciting and praising a crime (art. 255), or crossing the border of Poland in order to commit a crime of a terrorist nature (art. 259a).

6. Mode of Introduction, Decision Control, Territorial Scope, Duration and Termination of the State of Emergency

The Council of Ministers takes the initiative to introduce a state of emergency and adopts a resolution to submit a motion to the President of the Republic of Poland to introduce a state of emergency. A problem with introducing a state of emergency may arise in a situation where the Council of Ministers cannot convene for a meeting to submit such a motion.

In addition, the legislator should foresee such circumstances and take into account that in situations where the Council of Ministers cannot convene for a meeting, the Prime Minister himself may submit a motion to the President of the Republic of Poland. Of course, such a solution could only take place in cases of extreme necessity. *The Constitution of the Republic of Poland* in Article 230 very precisely indicates the bodies authorized to approve decisions to introduce a state of

emergency. Article 230 of the *Constitution of the Republic of Poland* indicates that: "in the event of a threat to the constitutional system of the state, the security of citizens or public order, the President of the Republic of Poland, at the request of the Council of Ministers, may introduce a state of emergency for a specified period, no longer than 90 days, in part or on the entire territory" (Article 231).

In addition, the Council of Ministers in the application addressed to the President of the Republic of Poland is obliged to state the reason for introducing a state of emergency, the restriction of human and civil rights and freedoms adequate to the level of threat and its duration, together with the indication of the area of the state of emergency (Gołębiowska *et al.*, 2017a).

The validity of the state of emergency is counted from the date of publication of the regulation issued by the President of the Republic of Poland on the introduction of a state of emergency in the Journal of Laws of the Republic of Poland. The decision to introduce and lift a state of emergency should be notified by the minister responsible for foreign affairs, to the Secretary General of the United States Organization and to the Secretary General of the Council of Europe.

An important role in the event of the introduction of a state of emergency is played by the editors-in-chief of daily newspapers, together with the broadcasters of television and radio programs, whose duty is to immediately and free of charge provide the content of the regulation of the President of the Republic of Poland to the public. Public information should also include other legal acts that directly concern this state, due to the voivode competent for the editorial center or broadcaster (Gołębiowska *et al.*, 2021).

The Sejm has been granted control rights regarding the regulation of the President of the Republic of Poland on the introduction of a state of emergency and for this reason, when assessing the motives for introducing a state of emergency – due to the rather general constitutional premises for introducing a state of emergency – it may assess the situation that justified introducing this state in a different way, and therefore may repeal the President's regulation (Prokop, 2005).

The rather general premises regarding the introduction of a state of emergency mean that greater controversy may arise regarding the validity of the President's regulation. Moreover, in the case of a minority government, the ruling opposition may seek to repeal the decision to introduce this state.

A state of emergency may be introduced on part or all of the territory of the country by the President of the Republic of Poland. In the event of the introduction of a state of emergency due to a constitutional threat to the state system, it is very likely that the territorial scope will cover the entire country. According to Article 230 of the *Constitution of the Republic of Poland*, a state of emergency may be introduced on a part of the territory directly affected by the threat, e.g., in Mazovia.

In the event of the introduction of a state of emergency due to a threat to public order or the safety of citizens, the regulation will be of a local nature and will be introduced in a specific area (Gołębiowska, 2017).

The duration of a state of emergency in light of the provisions of *the Constitution of the Republic of Poland* should not be longer than the duration of the threat (Prokop, 2005). The premise for lifting this state of emergency will be the statement by the relevant authorities that the threat has passed and it is possible to restore the normal functioning of the state.

The regulation of the President of the Republic of Poland on the introduction of a state of emergency should precisely specify the day on which this state will end. Moreover, from a legal point of view, there is no obligation to issue a new regulation lifting the state of emergency.

A state of emergency may be introduced for a period of ninety days. Moreover, if the proper functioning of the state is not restored within these 90 days, it may be extended once to sixty days and only with the consent of the Sejm. The provisions of *the Constitution of the Republic of Poland* do not indicate a minimum duration of a state of emergency (Gołębiowska *et al.*, 2017c). Thus, the duration of a state of emergency may be several or a dozen or so hours.

However, the end of a state of emergency may occur as a result of specific premises. The decision to end a state of emergency is at the discretion of the Council of Ministers and the President of the Republic of Poland, but the Sejm has been equipped with special constitutional means aimed at persuading the government to abolish this state. In the light of the Act of 21 June 2002 *on the state of emergency*, in accordance with art. 5 sec. 2, the President of the Republic of Poland, at the request of the Council of Ministers, by way of a regulation, abolishes the state of emergency before the expiry of the period for which it was introduced.

However, this can only happen if the reasons for introducing this institution of the state of emergency have ceased and it is possible to restore the normal functioning of the state (Gołębiowska *et al.*, 2021). Similarly to the introduction of a state of emergency, in the event of its abolition, the regulation on the abolition of the state of emergency should be published in the Journal of Laws and made public.

7. Conclusions

The main problem contained in the article was to present the institution of the state of emergency, or the state of exception, as an important element of Polish law. Unfortunately, issues related to states of emergency are not very often addressed in the doctrine of Polish law. The reason for this situation is certainly the exceptional nature of the discussed institution and the lack of knowledge whether we will ever have the opportunity to introduce one of the states of emergency in practice.

The analysis of scientific literature and the analysis of the collected empirical material allow for the formulation of several conclusions and observations. Firstly, the regulations related to the introduction of states of emergency in *the Constitution of the Republic of Poland* do not raise major doubts from the perspective of the democratic principles of the Polish state.

Another important element is the fact that the introduction of a state of emergency only organically affects the rights and freedoms of citizens, and does not suspend them. Moreover, on the one hand, the state guards the observance of human rights and freedoms, and on the other hand, it has the possibility to introduce certain restrictions in this respect. Of course, the introduction of certain restrictions in the sphere of achieving the goal, i.e. preventing the threat.

The material collected during the research and the analyses performed show that knowledge about the institution of the state of emergency is not widely accepted. It is known that in this matter there are serious gaps in knowledge about the most important legal act in the Polish legal system, which is sometimes associated with unawareness of one's own rights.

However, it should be noted that states of emergency, and in this particular case the analyzed state of emergency, constitute an important element of Polish legislation. The analysis of the literature shows that the level of preparation of the Polish authorities to introduce the state of emergency was assessed negatively. Some authors considered that the Polish authorities are not adequately prepared for this type of action. Another issue that may raise doubts is the lack of addressing the subject matter related to the issue of the state of emergency.

The research and considerations undertaken in the article do not exhaust the entirety of the issues related to the institution of the state of emergency in Polish law. This issue is a very broad concept, which is why an attempt was made to show the element of the high-ranking institution of the state of emergency, which is used only and exclusively in special threats, when other constitutional measures are ineffective.

The evaluation of threats means that the subject of states of emergency should be taken up every day and constantly improved. Unfortunately, the lack of knowledge or adaptation of this institution to changing conditions may cause it to be ineffective in the face of a real threat. Unfortunately, then it will be too late to analyze the constitutional doctrines.

In summary, it should be recognized that the institution of a state of emergency is an essential element in Polish law. In the event of a threat, it is intended to protect the most important values of the state, i.e. independence, territorial inviolability and sovereignty.

References:

- Brzeziński, M. 2007. States of emergency in Polish constitutions. Warsaw, Sejm Publishing House.
- Eckhardt, K. 2012. State of emergency as an institution of Polish constitutional law. Przemysł-Rzeszów, Wydawnictwo Wyższa Szkoła Prawa i Administracji Przemysł - Rzeszów.
- Gołębiowska, A., et al., (ed.). 2017a. Public administration in the state security system, Publishing house of the Chancellery of the Senate of the Republic of Poland, Warsaw.
- Gołębiowska, A., et. al. 2017b. Government and local government administration bodies in the sphere of security and public order. In: Public administration in the state security system, A. Gołębiowska, et al., (ed.), Publishing house of the Chancellery of the Senate of the Republic of Poland, Warsaw, p. 9-28.
- Gołębiowska, A., (ed.). 2017c. Challenges safety civil. Publishing House Sejmowe, Warsaw.
- Gołębiowska, A., et al., (ed.). 2021. Security in the era of digital transformation – aspects legal, organizational and social. SGSP Publishing House, Warsaw.
- Prokop, K. 2005. States of emergency in the Constitution of the Republic of Poland. Białystok, Wydawnictwo Temida 2.

Legal acts:

- Constitution March of 17 March 1921 (Journal of Laws 1921, No. 44, item 267).
- Constitution Polish The Republic of Poland People's Republic of July 22 , 1952 (Journal of Laws 1952, No. 33, item 232).
- Constitution The Republic of Poland Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483, as amended).
- Act of 25 July 1919 on to ensure safety Countries and maintenance okay public during war (Journal of Laws of 1919, No. 61, item 364).
- Act of 21 November 1967 on universal duty defense The Republic of Poland Poland (Journal of Laws 1967, No. 44, item 220, as amended).
- Act of 12 October 1990 on the protection border state (Journal of Laws No. 78, item 461).
- Act of 18 April 2002 on the state of disasters (Journal of Laws 2002 , No. 62, item 558, as amended).
- Act of 21 June 2002 on the state of exceptional (Journal of Laws 2002, No. 113, item 985, as amended).
- Act of 29 August 2002 on the state of war and about competences The Chief Commanders Forces Armed and rules his subordination constitutional to the organs The Republic of Poland Poland (Journal of Laws 2002, No. 156, item 1301, as amended).
- Treaty North Atlantic Treaty of 4 April 1949 (Journal of Laws 2000, No. 87, item 970).
- Ordinance Advice Ministers of 18 April 1919 on the method use army For security okay public (Journal of Laws of 1919, No. 35, item 276).
- Decree about the introduction state exceptional of 2 January 1919 (Journal of Laws of 1919, No. 1, item 79).
- Decree about using troops in accidents exceptional from the day January 2, 1919 (Journal of Laws of 1919, No. 1, item 80).